

Extra Ordinary Part - VI / 2013

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The Gujarat Government Gazette

EXTRAORDINARY

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WEDNESDAY, JANUARY 30, 2013/MAGHA 10, 1934

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 30th January, 2013.

No. RPB/7-2013/Act.-20-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
Legislative Department

New Delhi, the 12th May, 2012, Vaisakha 22, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 12th May, 2012, is hereby published for general information:-

THE INDIAN MEDICAL COUNCIL (AMENDMENT) ACT, 2012

AN

(Act No. 20 of 2012)

ACT

[12th May, 2012]

further to amend the Indian Medical Council Act, 1956.

BE it enacted by Parliament in the Sixty-third Year of the republic of India as follows :-

1. (1) This Act may be called the Indian Medical Council (Amendment) Act, 2012. Short title, and commencement.
- (2) It shall come into force on the 15th day of May, 2012
2. In section 3A of the Indian Medical Council Act, 1956, in sub-section. (2), for the words "two years", the words "three years" shall be substituted. Amendment of section 3A of Act 102 of 1956.

Sd/-

V. K. BHASIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTH,

Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 30th January, 2013.

No. RPB/10-2013/Act.-23-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 28th May, 2012; Jyaishta 7, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 28th May, 2012, is hereby published for general information:-

THE FINANCE ACT, 2012

[28th May, 2012]

(Act No. 23 of 2012)

ACT

to give effect to the financial proposals of the Central Government for the financial year 2012-2013.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Finance Act, 2012.

(2) Save as otherwise provided in this Act, sections 2 to 118 shall be deemed to have come into force on the 1st day of April, 2012.

Short title and commencement.

CHAPTER II

RATES OF INCOME-TAX

2. (1) Subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on the 1st day of April, 2012, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax shall be increased by a surcharge, for purposes of the Union, calculated in each case in the manner provided therein.

Income-tax.

(2) In the cases to which Paragraph A of Part I of the First Schedule applies, where the assessee has, in the previous year, any net agricultural income exceeding five thousand rupees, in addition to total income, and the total income exceeds one lakh eighty thousand rupees, then,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first one lakh eighty thousand rupees of the total income but without being liable to tax], only for the purpose of charging income-tax in respect of the total income; and

(b) the income-tax chargeable shall be calculated as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of one lakh eighty thousand rupees, and the amount of income-tax shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income as so increased were the total income;

(iii) the amount of income-tax determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax in respect of the total income:

Provided that in the case of every woman, resident in India and below the age of sixty years at any time during the previous year, referred to in item (II) of Paragraph A of Part I of the First Schedule, the provisions of this sub-section shall have effect as if for the words "one lakh eighty thousand rupees", the words "one lakh ninety thousand rupees" had been substituted:

Provided further that in the case of every individual, being a resident in India, who is referred to in item (III) of Paragraph A of Part I of the First Schedule, the provisions of this sub-section shall have effect as if for the words "one lakh eighty thousand rupees", the words "two lakh fifty thousand rupees" had been substituted:

Provided also that in the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year, referred to in item (IV) of Paragraph A of Part I of the First Schedule, the provisions of this sub-section shall have effect as if for the words "one lakh eighty thousand rupees", the words "five lakh rupees" had been substituted.

(3) In cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or section 115JC or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be:

43 of 1961.

Provided that the amount of income-tax computed in accordance with the provisions of section 111A or section 112 shall be increased by a surcharge, for purposes of the Union, as provided in Paragraph A, B, C, D or E, as the case may be, of Part I of the First Schedule:

Provided further that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115BBC, 115BBD, 115E and 115JB

of the Income-tax Act, the amount of income-tax computed under this sub-section shall be increased by a surcharge, for purposes of the Union, calculated,—

(a) in the case of a domestic company, at the rate of five per cent. of such income-tax where the total income exceeds one crore rupees;

(b) in the case of every company, other than a domestic company, at the rate of two per cent. of such income-tax where the total income exceeds one crore rupees:

Provided also that in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, and such income exceeds one crore rupees, the total amount payable as income-tax and surcharge on such income-tax shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

(4) In cases in which tax has to be charged and paid under section 115-O or sub-section (2) of section 115R of the Income-tax Act, the tax shall be charged and paid at the rates as specified in those sections and shall be increased by a surcharge, for purposes of the Union, calculated at the rate of five per cent. of such tax.

(5) In cases in which tax has to be deducted under sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, at the rates in force, the deductions shall be made at the rates specified in Part II of the First Schedule and shall be increased by a surcharge, for purposes of the Union, calculated in cases wherever prescribed, in the manner provided therein.

(6) In cases in which tax has to be deducted under sections 194C, 194E, 194EE, 194F, 194G, 194H, 194-I, 194J, 194LA, 194LB, 194LC, 196B, 196C and 196D of the Income-tax Act, the deductions shall be made at the rates specified in those sections and shall be increased by a surcharge, for purposes of the Union, in the case of every company, other than a domestic company, calculated at the rate of two per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees.

(7) In cases in which tax has to be collected under the proviso to section 194B of the Income-tax Act, the collection shall be made at the rates specified in Part II of the First Schedule, and shall be increased by a surcharge, for purposes of the Union, calculated, in cases wherever prescribed, in the manner provided therein.

(8) In cases in which tax has to be collected under section 206C of the Income-tax Act, the collection shall be made at the rates specified in that section and shall be increased by a surcharge, for purposes of the Union, in the case of every company, other than a domestic company, calculated at the rate of two per cent. of such tax, where the amount or the aggregate of such amounts collected and subject to the collection exceeds one crore rupees.

(9) Subject to the provisions of sub-section (10), in cases in which income-tax has to be charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the Income-tax Act or deducted from, or paid on, income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be so charged, deducted or computed at the rate or rates specified in Part III of the First Schedule and such tax shall be increased by a surcharge, for purposes of the Union, calculated in such cases and in such manner as provided therein:

Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or section 115JC or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, "advance tax" shall be computed with reference to the rates imposed by this sub-section or the rates as specified in that Chapter or section, as the case may be:

Provided further that the amount of "advance tax" computed in accordance with the provisions of section 111A or section 112 of the Income-tax Act shall be increased by a surcharge, for purposes of the Union, as provided in Paragraph E of Part III of the First Schedule pertaining to the case of a company:

Provided also that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115BBC, 115BBD, 115BBE, 115E and 115JB of the Income-tax Act, "advance tax" computed under the first proviso shall be increased by a surcharge, for purposes of the Union, calculated,—

(a) in the case of every domestic company, at the rate of five per cent. of such "advance tax" where the total income exceeds one crore rupees;

(b) in the case of every company, other than a domestic company, at the rate of two per cent. of such "advance tax" where the total income exceeds one crore rupees:

Provided also that in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, and such income exceeds one crore rupees, the total amount payable as "advance tax" on such income and surcharge thereon, shall not exceed the total amount payable as "advance tax" on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

(10) In cases to which Paragraph A of Part III of the First Schedule applies, where the assessee has, in the previous year or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any net agricultural income exceeding five thousand rupees, in addition to total income and the total income exceeds two lakh rupees, then, in charging income-tax under sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or in computing the "advance tax" payable under Chapter XVII-C of the said Act, at the rate or rates in force,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first two lakh rupees of the total income but without being liable to tax], only for the purpose of charging or computing such income-tax or, as the case may be, "advance tax" in respect of the total income; and

(b) such income-tax or, as the case may be, "advance tax" shall be so charged or computed as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax or "advance tax" shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of two lakh rupees, and the amount of income-tax or "advance tax" shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income were the total income;

(iii) the amount of income-tax or "advance tax" determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax or, as the case may be, "advance tax" determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax or, as the case may be, "advance tax" in respect of the total income:

Provided that in the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year, referred to in item (17) of Paragraph A of Part III of the First Schedule, the provisions of this sub-section shall have effect as if for the words "two lakh rupees", the words "two lakh fifty thousand rupees" had been substituted:

Provided further that in the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year, referred to in item (III) of Paragraph A of Part III of the First Schedule, the provisions of this sub-section shall have effect as if for the words "two lakh rupees", the words "five lakh rupees" had been substituted.

(11) The amount of income-tax as specified in sub-sections (1) to (10) and as increased by the applicable surcharge, for purposes of the Union, calculated in the manner provided therein, shall be further increased by an additional surcharge, for purposes of the Union, to be called the "Education Cess on income-tax", calculated at the rate of two per cent. of such income-tax and surcharge so as to fulfil the commitment of the Government to provide and finance universalised quality basic education:

Provided that nothing contained in this sub-section shall apply to cases in which tax is to be deducted or collected under the sections of the Income-tax Act mentioned in sub-sections (5), (6), (7) and (8), if the income subjected to deduction of tax at source or collection of tax at source is paid to a domestic company and any other person who is resident in India.

(12) The amount of income-tax as specified in sub-sections (1) to (10) and as increased by the applicable surcharge, for purposes of the Union, calculated in the manner provided therein, shall also be increased by an additional surcharge, for purposes of the Union, to be called the "Secondary and Higher Education Cess on income-tax", calculated at the rate of one per cent. of such income-tax and surcharge so as to fulfil the commitment of the Government to provide and finance secondary and higher education:

Provided that nothing contained in this sub-section shall apply to cases in which tax is to be deducted or collected under the sections of the Income-tax Act mentioned in sub-sections (5), (6), (7) and (8), if the income subjected to deduction of tax at source or collection of tax at source is paid to a domestic company and any other person who is resident in India.

(13) For the purposes of this section and the First Schedule,—

(a) "domestic company" means an Indian company or any other company which, in respect of its income liable to income-tax under the Income-tax Act, for the assessment year commencing on the 1st day of April, 2012, has made the prescribed arrangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income;

(b) "insurance commission" means any remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance);

(c) "net agricultural income", in relation to a person, means the total amount of agricultural income, from whatever source derived, of that person computed in accordance with the rules contained in Part IV of the First Schedule;

(d) all other words and expressions used in this section and the First Schedule but not defined in this sub-section and defined in the Income-tax Act shall have the meanings, respectively, assigned to them in that Act.

CHAPTER III

DIRECT TAXES

Income-tax

3. In section 2 of the Income-tax Act,—

(i) in clause (14), at the end, the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1962, namely:—

'Explanation.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in

Amendment
of section 2.

or in relation to an Indian company, including rights of management or control or any other rights whatsoever;";

(ii) in clause (16), after the words "Commissioner of Income-tax", the words "or a Director of Income-tax" shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1988;

(iii) in clause (19AA), in sub-clause (iv), for the words "proportionate basis", the words "proportionate basis except where the resulting company itself is a shareholder of the demerged company" shall be substituted with effect from the 1st day of April, 2013;

(iv) in clause (24), after sub-clause (xv), the following sub-clause shall be inserted with effect from the 1st day of April, 2013, namely:—

"(xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (viib) of sub-section (2) of section 56;";

(v) in clause (47), the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1962, namely:—

'*Explanation 2.*—For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;'

Amendment
of section 9.

4. In section 9 of the Income-tax Act, in sub-section (1),—

(a) in clause (i), after *Explanation 3*, the following *Explanations* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1962, namely:—

'*Explanation 4.*—For the removal of doubts, it is hereby clarified that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".

Explanation 5.—For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.';

(b) in clause (vi), after *Explanation 3*, the following *Explanations* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 1976, namely:—

'*Explanation 4.*—For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

Explanation 5.—For the removal of doubts, it is hereby clarified that the royalty includes and has always included consideration in respect of any right, property or information, whether or not—

(a) the possession or control of such right, property or information is with the payer;

(b) such right, property or information is used directly by the payer;

(c) the location of such right, property or information is in India.

Explanation 6.—For the removal of doubts, it is hereby clarified that the expression “process” includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret;.

5. In section 10 of the Income-tax Act,—

Amendment
of section 10.

(A) in clause (10D), with effect from the 1st day of April, 2013,—

(i) in sub-clause (c),—

(I) after the words, figures and letters “the 1st day of April, 2003”, the words, figures and letters “but on or before the 31st day of March, 2012” shall be inserted;

(II) for the word “assured:”, the words “assured; or” shall be substituted;

(ii) after sub-clause (c) and before the first proviso, the following sub-clause shall be inserted, namely:—

“(d) any sum received under an insurance policy issued on or after the 1st day of April, 2012 in respect of which the premium payable for any of the years during the term of the policy exceeds ten per cent. of the actual capital sum assured;”;

(iii) in the first proviso, for the words “this sub-clause”, the words, brackets and letters “sub-clauses (c) and (d)” shall be substituted;

(iv) in the second proviso, for the words “this sub-clause”, the word, brackets and letter “sub-clause (c)” shall be substituted;

(v) the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

‘*Explanation 2.*—For the purposes of sub-clause (d), the expression “actual capital sum assured” shall have the meaning assigned to it in the *Explanation* to sub-section (3A) of section 80C;’;

(B) in clause (23C), after the sixteenth proviso, the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2009, namely:—

“Provided also that the income of a trust or institution referred to in sub-clause (iv) or sub-clause (v) shall be included in its total income of the previous year if the provisions of the first proviso to clause (15) of section 2 become applicable to such trust or institution in the said previous year, whether or not any approval granted or notification issued in respect of such trust or institution has been withdrawn or rescinded;”;

(C) after clause (23BVG), the following clause shall be inserted with effect from the 1st day of April, 2013, namely:—

“(23BBH) any income of the Prasar Bharati (Broadcasting Corporation of India) established under sub-section (1) of section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990;”;

(D) in clause (23FB), in *Explanation 1*, for clause (c), the following clause shall be substituted with effect from the 1st day of April, 2013, namely:—

“(c) “venture capital undertaking” means a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds)

Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992;:

15 of 1992.

(E) after clause (47), the following clause shall be inserted with effect from the 1st day of April, 2012, namely:—

“(48) any income received in India in Indian currency by a foreign company on account of sale of crude oil to any person in India:

Provided that—

(i) receipt of such income in India by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government;

(ii) having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf; and

(iii) the foreign company is not engaged in any activity, other than receipt of such income, in India.”.

Amendment
of section 13.

6. In section 13 of the Income-tax Act, after sub-section (7) and before *Explanation 1*, the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2009, namely:—

“(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.”.

Amendment
of section 32.

7. In section 32 of the Income-tax Act, in sub-section (1), in clause (ia), after the words “any article or thing”, the words “or in the business of generation or generation and distribution of power” shall be inserted with effect from the 1st day of April, 2013.

Amendment
of section 35.

8. In section 35 of the Income-tax Act, in sub-section (2AB), in clause (5), for the words, figures and letters “the 31st day of March, 2012”, the words, figures and letters “the 31st day of March, 2017” shall be substituted with effect from the 1st day of April, 2013.

Amendment
of section
35AD.

9. In section 35AD of the Income-tax Act,—

(a) after sub-section (1), the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely:—

“(1A) Where the specified business is of the nature referred to in sub-clause (i) or sub-clause (ii) or sub-clause (v) or sub-clause (vii) or sub-clause (viii) of clause (c) of sub-section (8) and has commenced its operations on or after the 1st day of April, 2012, the deduction under sub-section (1) shall be allowed of an amount equal to one and one-half times of the expenditure referred to therein.”;

(b) in sub-section (5), with effect from the 1st day of April, 2013,—

(A) in clause (ae), the word “and” shall be omitted;

(B) after clause (ae), the following clauses shall be inserted, namely:—

“(af) on or after the 1st day of April, 2012, where the specified business is in the nature of setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;

52 of 1962.

(ag) on or after the 1st day of April, 2012, where the specified business is in the nature of bee-keeping and production of honey and beeswax;

(ah) on or after the 1st day of April, 2012, where the specified business is in the nature of setting up and operating a warehousing facility for storage of sugar; and”;

(C) in clause (b), for the words, brackets and letters "clause (a), clause (aa), clause (ab) and clause (ac)", the words "any of the above clauses" shall be substituted;

(c) after sub-section (6), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2011, namely:—

"(6A) Where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business referred to in sub-clause (iv) of clause (c) of sub-section (8).";

(d) in sub-section (8), in clause (c), after sub-clause (viii), the following sub-clauses shall be inserted with effect from the 1st day of April, 2013, namely:—

"(ix) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;

(x) bee-keeping and production of honey and beeswax;

(xi) setting up and operating a warehousing facility for storage of sugar;".

10. After section 35CCB of the Income-tax Act, the following sections shall be inserted with effect from the 1st day of April, 2013, namely:—

Insertion of
new sections
35CCC and
35CCD.

"35CCC. (1) Where an assessee incurs any expenditure on agricultural extension project notified by the Board in this behalf in accordance with the guidelines as may be prescribed, then, there shall be allowed a deduction of a sum equal to one and one-half times of such expenditure.

Expenditure
on agricul-
tural
extension
project.

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year.

35CCD. (1) Where a company incurs any expenditure (not being expenditure in the nature of cost of any land or building) on any skill development project notified by the Board in this behalf in accordance with the guidelines as may be prescribed, then, there shall be allowed a deduction of a sum equal to one and one-half times of such expenditure.

Expenditure
on skill
development
project.

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year."

11. In section 40 of the Income-tax Act, in clause (a), in sub-clause (ia), after the proviso and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2013, namely:—

Amendment
of section 40.

"Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso."

Amendment
of section
40A.

12. In section 40A of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 2013,—

(i) in clause (a), the following proviso shall be inserted, namely:—

“Provided that no disallowance, on account of any expenditure being excessive or unreasonable having regard to the fair market value, shall be made in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm's length price as defined in clause (ii) of section 92F.”;

(ii) in clause (b), in sub-clause (iv), after the words “or any relative of such director, partner or member”, the words “or any other company carrying on business or profession in which the first mentioned company has substantial interest” shall be inserted.

Amendment
of section
44AB.

13. In section 44AB of the Income-tax Act,—

(i) in clause (a), for the words “sixty lakh rupees”, the words “one crore rupees” shall be substituted with effect from the 1st day of April, 2013;

(ii) in clause (b), for the words “fifteen lakh rupees”, the words “twenty-five lakh rupees” shall be substituted with effect from the 1st day of April, 2013;

(iii) in the *Explanation*, in clause (ii), for the words, figures and letters “the 30th day of September of the assessment year”, the words, brackets and figures “the due date for furnishing the return of income under sub-section (1) of section 139” shall be substituted.

Amendment
of section
44AD.

14. In section 44AD of the Income-tax Act,—

(a) after sub-section (5), and before the *Explanation*, the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2011, namely:—

“(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—

(i) a person carrying on profession as referred to in sub-section (1) of section 44AA;

(ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business.”;

(b) in the *Explanation*, in clause (b), in sub-clause (ii), for the words “sixty lakh rupees”, the words “one crore rupees” shall be substituted with effect from the 1st day of April, 2013.

Amendment
of section 47.

15. In section 47 of the Income-tax Act, in clause (vii), in sub-clause (a), for the words “amalgamated company, and”, the words “amalgamated company except where the shareholder itself is the amalgamated company, and” shall be substituted with effect from the 1st day of April, 2013.

Amendment
of section 49.

16. In section 49 of the Income-tax Act, in sub-section (1), in clause (iii), in sub-clause (e), for the words, brackets, figures and letter “clause (xiiib) of section 47”, the words, brackets, figures and letter “clause (xiii) or clause (xiiib) or clause (xiv) of section 47” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1999.

17. After section 50C of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2013, namely:—

Insertion of new section 50D.

“50D. Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.”

Fair market value deemed to be full value of consideration in certain cases.

18. In section 54B of the Income-tax Act, in sub-section (1), for the words “the assessee or a parent of his”, the words “the assessee being an individual or his parent, or a Hindu undivided family” shall be substituted with effect from the 1st day of April, 2013.

Amendment of section 54B.

19. After section 54GA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2013, namely:—

Insertion of new section 54GB.

‘54GB. (1) Where,—

Capital gain on transfer of residential property not to be charged in certain cases.

(i) the capital gain arises from the transfer of a long-term capital asset, being a residential property (a house or a plot of land), owned by the eligible assessee (herein referred to as the assessee); and

(ii) the assessee, before the due date of furnishing of return of income under sub-section (1) of section 139, utilises the net consideration for subscription in the equity shares of an eligible company (herein referred to as the company); and

(iii) the company has, within one year from the date of subscription in equity shares by the assessee, utilised this amount for purchase of new asset, then, instead of the capital gain being charged to income-tax as the income of the previous year in which the transfer takes place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the amount of the net consideration is greater than the cost of the new asset, then, so much of the capital gain as it bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45 as the income of the previous year; or

(b) if the amount of the net consideration is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45 as the income of the previous year.

(2) The amount of the net consideration, which has been received by the company for issue of shares to the assessee, to the extent it is not utilised by the company for the purchase of the new asset before the due date of furnishing of the return of income by the assessee under section 139, shall be deposited by the company, before the said due date in an account in any such bank or institution as may be specified and shall be utilised in accordance with any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and the return furnished by the assessee shall be accompanied by proof of such deposit having been made.

(3) For the purposes of sub-section (1), the amount, if any, already utilised by the company for the purchase of the new asset together with the amount deposited under sub-section (2) shall be deemed to be the cost of the new asset:

Provided that if the amount so deposited is not utilised, wholly or partly, for the purchase of the new asset within the period specified in sub-section (1), then,—

(i) the amount by which—

(a) the amount of capital gain arising from the transfer of the residential property not charged under section 45 on the basis of the cost of the new asset as provided in sub-section (1),

exceeds—

(b) the amount that would not have been so charged had the amount actually utilised for the purchase of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the assessee for the previous year in which the period of one year from the date of the subscription in equity shares by the assessee expires; and

(ii) the company shall be entitled to withdraw such amount in accordance with the scheme.

(4) If the equity shares of the company or the new asset acquired by the company are sold or otherwise transferred within a period of five years from the date of their acquisition, the amount of capital gain arising from the transfer of the residential property not charged under section 45 as provided in sub-section (1) shall be deemed to be the income of the assessee chargeable under the head "capital gains" of the previous year in which such equity shares or such new asset are sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of shares or of the new asset, in the hands of the assessee or the company, as the case may be.

(5) The provisions of this section shall not apply to any transfer of residential property made after the 31st day of March, 2017.

(6) For the purposes of this section,—

(a) "eligible assessee" means an individual or a Hindu undivided family;

(b) "eligible company" means a company which fulfils the following conditions, namely:—

(i) it is a company incorporated in India during the period from the 1st day of April of the previous year relevant to the assessment year in which the capital gain arises to the due date of furnishing of return of income under sub-section (1) of section 139 by the assessee;

(ii) it is engaged in the business of manufacture of an article or a thing;

(iii) it is a company in which the assessee has more than fifty per cent. share capital or more than fifty per cent. voting rights after the subscription in shares by the assessee; and

(iv) it is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006;

27 of 2006.

(c) "net consideration" shall have the meaning assigned to it in the *Explanation* to section 54F;

(d) "new asset" means new plant and machinery but does not include—

(i) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;

(ii) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house;

(iii) any office appliances including computers or computer software;

(iv) any vehicle; or

(v) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in

computing the income chargeable under the head "Profits and gains of business or profession" of any previous year."

20. In section 55A of the Income-tax Act, in clause (a), for the words "is less than its fair market value", the words "is at variance with its fair market value" shall be substituted with effect from the 1st day of July, 2012.

Amendment
of section
55A.

21. In section 56 of the Income-tax Act, in sub-section (2),—

Amendment
of section 56.

(A) in clause (vii), in the *Explanation*, for clause (e), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 2009, namely:—

'(e) "relative" means,—

(i) in case of an individual—

(A) spouse of the individual;

(B) brother or sister of the individual;

(C) brother or sister of the spouse of the individual;

(D) brother or sister of either of the parents of the individual;

(E) any lineal ascendant or descendant of the individual;

(F) any lineal ascendant or descendant of the spouse of the individual;

(G) spouse of the person referred to in items (B) to (F); and

(ii) in case of a Hindu undivided family, any member thereof;';

(B) after clause (viia), the following shall be inserted with effect from the 1st day of April, 2013, namely:—

'(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received—

(i) by a venture capital undertaking from a venture capital company or a venture capital fund; or

(ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Explanation.—For the purposes of this clause,—

(a) the fair market value of the shares shall be the value—

(i) as may be determined in accordance with such method as may be prescribed; or

(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,

whichever is higher;

(b) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of *Explanation 1* to clause (23FB) of section 10;.

Amendment
of section 68.

22. In section 68 of the Income-tax Act, the following provisos shall be inserted with effect from the 1st day of April, 2013, namely:—

“Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”

Amendment
of section
80A.

23. In section 80A of the Income-tax Act, in sub-section (6), in the *Explanation*, after clause (ii), the following clause shall be inserted with effect from the 1st day of April, 2013, namely:—

“(iii) in relation to any goods or services sold, supplied or acquired means the arm's length price as defined in clause (ii) of section 92F of such goods or services, if it is a specified domestic transaction referred to in section 92BA.”

Amendment
of section
80C.

24. In section 80C of the Income-tax Act, with effect from the 1st day of April, 2013,—

(i) in sub-section (3), for the words “insurance policy other than a contract for a deferred annuity”, the words, figures and letters “insurance policy, other than a contract for a deferred annuity, issued on or before the 31st day of March, 2012,” shall be substituted;

(ii) after sub-section (3), the following shall be inserted, namely:—

“(3A) The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on an insurance policy, other than a contract for a deferred annuity, issued on or after the 1st day of April, 2012 as is not in excess of ten per cent. of the actual capital sum assured.

Explanation.—For the purposes of this sub-section, “actual capital sum assured” in relation to a life insurance policy shall mean the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account—

(i) the value of any premium agreed to be returned; or

(ii) any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.”

Insertion of
new section
80CCG.

25. After section 80CCF of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2013, namely:—

Deduction in
respect of
investment
made under
an equity
savings
scheme.

“80CCG. (1) Where an assessee, being a resident individual, has, in a previous year, acquired listed equity shares in accordance with a scheme, as may be notified by the Central Government in this behalf, he shall, subject to the provisions of sub-section (3), be allowed a deduction, in the computation of his total income of the assessment year relevant to such previous year, of fifty per cent. of the amount invested in such equity shares to the extent such deduction does not exceed twenty-five thousand rupees.

(2) Where an assessee has claimed and allowed a deduction under this section for any assessment year in respect of any amount, he shall not be allowed any deduction under this section for any subsequent assessment year.

(3) The deduction under sub-section (1) shall be subject to the following conditions, namely:—

(i) the gross total income of the assessee for the relevant assessment year shall not exceed ten lakh rupees;

(ii) the assessee is a new retail investor as may be specified under the scheme referred to in sub-section (1);

(iii) the investment is made in such listed equity shares as may be specified under the scheme referred to in sub-section (1);

(iv) the investment is locked-in for a period of three years from the date of acquisition in accordance with the scheme referred to in sub-section (1); and

(v) such other condition as may be prescribed.

(4) If the assessee, in any previous year, fails to comply with any condition specified in sub-section (3), the deduction originally allowed shall be deemed to be the income of the assessee of such previous year and shall be liable to tax for the assessment year relevant to such previous year.”.

26. In section 80D of the Income-tax Act, with effect from the 1st day of April, 2013,—

Amendment
of section
80D.

(a) in sub-section (1), for the words “, other than cash,”, the words, brackets, figure and letter “as specified in sub-section (2B),” shall be substituted;

(b) in sub-section (2),—

(A) in clause (a), after the words “the Central Government Health Scheme”, the words “or any payment made on account of preventive health check-up of the assessee or his family” shall be inserted;

(B) in clause (b), after the words “parents of the assessee”, the words “or any payment made on account of preventive health check-up of the parent or parents of the assessee” shall be inserted;

(c) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) Where the amounts referred to in clauses (a) and (b) of sub-section (2) are paid on account of preventive health check-up, the deduction for such amounts shall be allowed to the extent it does not exceed in the aggregate five thousand rupees.

(2B) For the purposes of deduction under sub-section (1), the payment shall be made by—

(i) any mode, including cash, in respect of any sum paid on account of preventive health check-up;

(ii) any mode other than cash in all other cases not falling under clause (i).”;

(d) in sub-section (4), in the *Explanation*, for the words “sixty-five years”, the words “sixty years” shall be substituted.

27. In section 80DDB of the Income-tax Act, in the *Explanation*, in clause (iv), for the words “sixty-five years”, the words “sixty years” shall be substituted with effect from the 1st day of April, 2013.

Amendment
of section
80DDB.

Amendment
of section
80G.

28. In section 80G of the Income-tax Act, after sub-section (5C), the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely:—

“(5D) No deduction shall be allowed under this section in respect of donation of any sum exceeding ten thousand rupees unless such sum is paid by any mode other than cash.”.

Amendment
of section
80GGA.

29. In section 80GGA of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely:—

“(2A) No deduction shall be allowed under this section in respect of any sum exceeding ten thousand rupees unless such sum is paid by any mode other than cash.”.

Amendment
of section
80-1A.

30. In section 80-1A of the Income-tax Act, with effect from the 1st day of April, 2013,—

(a) in sub-section (4), in clause (iv), for the words, figures and letters “the 31st day of March, 2012”, wherever they occur, the words, figures and letters “the 31st day of March, 2013” shall respectively be substituted;

(b) in sub-section (8), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

‘*Explanation*.—For the purposes of this sub-section, “market value”, in relation to any goods or services, means—

(i) the price that such goods or services would ordinarily fetch in the open market; or

(ii) the arm’s length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA.’;

(c) in sub-section (10), the following proviso shall be inserted, namely:—

“Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm’s length price as defined in clause (ii) of section 92F.”.

Insertion of
new Part.

31. In Chapter VI-A of the Income-tax Act, after Part C, the following Part shall be inserted with effect from the 1st day of April, 2013, namely:—

‘CA.— *Deductions in respect of other incomes*

Deduction in
respect of
interest on
deposits in
savings
account.

80TTA. (1) Where the gross total income of an assessee, being an individual or a Hindu undivided family, includes any income by way of interest on deposits (not being time deposits) in a savings account with—

(a) a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act);

10 of 1949

(b) a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or

(c) a Post Office as defined in clause (k) of section 2 of the Indian Post Office Act, 1898,

6 of 1898

there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee a deduction as specified hereunder, namely:—

(i) in a case where the amount of such income does not exceed in the aggregate ten thousand rupees, the whole of such amount; and

(ii) in any other case, ten thousand rupees.

(2) Where the income referred to in this section is derived from any deposit in a savings account held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed under this section in respect of such income in computing the total income of any partner of the firm or any member of the association or any individual of the body.

Explanation.—For the purposes of this section, “time deposits” means the deposits repayable on expiry of fixed periods.’.

32. In section 90 of the Income-tax Act,—

Amendment
of section 90.

(a) after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely:—

“(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee, even if such provisions are not beneficial to him.”;

(b) after sub-section (3) and before *Explanation 1*, the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely:—

“(4) An assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing such particulars as may be prescribed, of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.”;

(c) after *Explanation 2*, the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of October, 2009, namely:—

“*Explanation 3.*—For the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and the notification issued thereunder being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.”.

33. In section 90A of the Income-tax Act,—

Amendment
of section
90A.

(a) after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely:—

“(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee, even if such provisions are not beneficial to him.”;

(b) after sub-section (3) and before *Explanation 1*, the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely:—

“(4) An assessee, not being a resident, to whom the agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing such particulars as may be prescribed, of his being a resident in any specified territory outside India, is obtained by him from the Government of that specified territory.”;

(c) after *Explanation 2*, the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 2006, namely:—

“*Explanation 3.*—For the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it

in the notification issued under sub-section (3) and the notification issued thereunder being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.”.

Amendment
of section 92.

34. In section 92 of the Income-tax Act, with effect from the 1st day of April, 2013,—

(a) in sub-section (2), for the words “international transaction”, the words “international transaction or specified domestic transaction” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm’s length price.”;

(c) in sub-section (3),—

(i) for the words “international transaction”, the words “international transaction or specified domestic transaction” shall be substituted;

(ii) for the word, brackets and figure “sub-section (1)”, the words, brackets, figures and letter “sub-section (1) or sub-section (2A)” shall be substituted;

(iii) for the words “that sub-section”, the words, brackets, figures and letter “sub-section (1) or sub-section (2A)” shall be substituted;

(iv) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted.

Amendment
of section
92B.

35. In section 92B of the Income-tax Act, after sub-section (2), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2002, namely:—

‘*Explanation.*—For the removal of doubts, it is hereby clarified that—

(i) the expression “international transaction” shall include—

(a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;

(b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

(c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;

(d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

(e) a transaction of business re-structuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

(ii) the expression "intangible property" shall include—

(a) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;

(b) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;

(c) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;

(d) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;

(e) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schematics, blueprints, proprietary documentation;

(f) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;

(g) contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;

(h) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;

(i) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;

(j) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;

(k) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;

(l) any other similar item that derives its value from its intellectual content rather than its physical attributes.'

36. After section 92B of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2013, namely:—

Insertion of new section 92BA.

'92BA. For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:—

Meaning of specified domestic transaction.

(i) any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A;

(ii) any transaction referred to in section 80A;

(iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;

(iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;

(v) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or

(vi) any other transaction as may be prescribed,

and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of five crore rupees.'

Amendment
of section
92C.

37. In section 92C of the Income-tax Act,—

(a) in sub-section (2),—

(i) in the second proviso, for the words “does not exceed such percentage of latter as may be notified”, the words “does not exceed such percentage not exceeding three per cent. of the latter, as may be notified” shall be substituted with effect from the 1st day of April, 2013;

(ii) after the second proviso, the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of October, 2009, namely:—

“*Explanation.*—For the removal of doubts, it is hereby clarified that the provisions of the second proviso shall also be applicable to all assessment or reassessment proceedings pending before an Assessing Officer as on the 1st day of October, 2009.”;

(b) after sub-section (2), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2002, namely:—

“(2A) Where the first proviso to sub-section (2) as it stood before its amendment by the Finance (No. 2) Act, 2009, is applicable in respect of an international transaction for an assessment year and the variation between the arithmetical mean referred to in the said proviso and the price at which such transaction has actually been undertaken exceeds five per cent. of the arithmetical mean, then, the assessee shall not be entitled to exercise the option as referred to in the said proviso.”;

33 of 2009.

(c) after sub-section (2A) as so inserted, the following sub-section shall be inserted with effect from the 1st day of July, 2012, namely:—

“(2B) Nothing contained in sub-section (2A) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154 for any assessment year the proceedings of which have been completed before the 1st day of October, 2009.”.

Amendment
of Chapter X.

38. In sections 92C, 92D and section 92E of Chapter X of the Income-tax Act, for the words “international transaction”, wherever they occur, the words “international transaction or specified domestic transaction” shall respectively be substituted with effect from the 1st day of April, 2013.

Amendment
of section
92CA.

39. In section 92CA of the Income-tax Act,—

(a) in sub-sections (1), (2) and (3), for the words “international transaction”, wherever they occur, the words “international transaction or specified domestic transaction” shall respectively be substituted with effect from the 1st day of April, 2013;

(b) after sub-section (2A), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 2002, namely:—

“(2B) Where in respect of an international transaction, the assessee has not furnished the report under section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding before him, the provisions of this Chapter shall apply as if such transaction is an international transaction referred to him under sub-section (1).”;

(c) after sub-section (2B), as so inserted, the following sub-section shall be inserted with effect from the 1st day of July, 2012, namely:—

“(2C) Nothing contained in sub-section (2B) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing

the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year, proceedings for which have been completed before the 1st day of July, 2012.”

40. After section 92CB of the Income-tax Act, the following sections shall be inserted with effect from the 1st day of July, 2012, namely:—

Insertion of
new sections
92CC and
92CD.

Advance
pricing
agreement.

‘92CC. (1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm’s length price or specifying the manner in which arm’s length price is to be determined, in relation to an international transaction to be entered into by that person.

(2) The manner of determination of arm’s length price referred to in sub-section (1), may include the methods referred to in sub-section (1) of section 92C or any other method, with such adjustments or variations, as may be necessary or expedient so to do.

(3) Notwithstanding anything contained in section 92C or section 92CA, the arm’s length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered.

(4) The agreement referred to in sub-section (1) shall be valid for such period not exceeding five consecutive previous years as may be specified in the agreement.

(5) The advance pricing agreement entered into shall be binding—

(a) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and

(b) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

(6) The agreement referred to in sub-section (1) shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

(7) The Board may, with the approval of the Central Government, by an order, declare an agreement to be void *ab initio*, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

(8) Upon declaring the agreement void *ab initio*,—

(a) all the provisions of the Act shall apply to the person as if such agreement had never been entered into; and

(b) notwithstanding anything contained in the Act, for the purpose of computing any period of limitation under this Act, the period beginning with the date of such agreement and ending on the date of order under sub-section (7) shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation, referred to in any provision of this Act, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(9) The Board may, for the purposes of this section, prescribe a scheme specifying therein the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

(10) Where an application is made by a person for entering into an agreement referred to in sub-section (1), the proceeding shall be deemed to be pending in the case of the person for the purposes of the Act.

Effect to
advance
pricing
agreement.

92CD. (1) Notwithstanding anything to the contrary contained in section 139, where any person has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement.

(2) Save as otherwise provided in this section, all other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139.

(3) If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1), proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the agreement.

(4) Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return in accordance with the provisions of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished.

(5) Notwithstanding anything contained in section 153 or section 153B or section 144C,—

(a) the order of assessment, reassessment or recomputation of total income under sub-section (3) shall be passed within a period of one year from the end of the financial year in which the modified return under sub-section (1) is furnished;

(b) the period of limitation as provided in section 153 or section 153B or section 144C for completion of pending assessment or reassessment proceedings referred to in sub-section (4) shall be extended by a period of twelve months.

(6) For the purposes of this section,—

(i) "agreement" means an agreement referred to in sub-section (1) of section 92CC;

(ii) the assessment or reassessment proceedings for an assessment year shall be deemed to have been completed where—

(a) an assessment or reassessment order has been passed; or

(b) no notice has been issued under sub-section (2) of section 143 till the expiry of the limitation period provided under the said section.

Insertion of
new Chapter
X-A.

41. After Chapter X of the Income-tax Act, the following Chapter shall be inserted with effect from the 1st day of April, 2014, namely:—

CHAPTER X-A

GENERAL ANTI-AVOIDANCE RULE

Applicability
of General
Anti-
Avoidance
Rule.

95. Notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement and the consequence in relation to tax arising therefrom may be determined subject to the provisions of this Chapter.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of this Chapter may be applied to any step in, or a part of, the arrangement as they are applicable to the arrangement.

96. (1) An impermissible avoidance arrangement means an arrangement, the main purpose or one of the main purposes of which is to obtain a tax benefit and it—

Impermissible
avoidance
arrangement.

(a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;

(b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;

(c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or

(d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for *bona fide* purposes.

(2) An arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

97. (1) An arrangement shall be deemed to lack commercial substance if—

Arrangement
to lack
commercial
substance.

(a) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or

(b) it involves or includes—

(i) round trip financing;

(ii) an accommodating party;

(iii) elements that have effect of offsetting or cancelling each other;

or

(iv) a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction; or

(c) it involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit (but for the provisions of this Chapter) for a party.

(2) For the purposes of sub-section (1), round trip financing includes any arrangement in which, through a series of transactions—

(a) funds are transferred among the parties to the arrangement; and

(b) such transactions do not have any substantial commercial purpose other than obtaining the tax benefit (but for the provisions of this Chapter),

without having any regard to—

(A) whether or not the funds involved in the round trip financing can be traced to any funds transferred to, or received by, any party in connection with the arrangement;

(B) the time, or sequence, in which the funds involved in the round trip financing are transferred or received; or

(C) the means by, or manner in, or mode through, which funds involved in the round trip financing are transferred or received.

(3) For the purposes of this Chapter, a party to an arrangement shall be an accommodating party, if the main purpose of the direct or indirect participation of that party in the arrangement, in whole or in part, is to obtain, directly or indirectly, a tax benefit (but for the provisions of this Chapter) for the assessee whether or not the party is a connected person in relation to any party to the arrangement.

(4) The following shall not be taken into account while determining whether an arrangement lacks commercial substance or not, namely:—

(i) the period or time for which the arrangement (including operations therein) exists;

(ii) the fact of payment of taxes, directly or indirectly, under the arrangement;

(iii) the fact that an exit route (including transfer of any activity or business or operations) is provided by the arrangement.

Consequence
of impermis-
sible
avoidance
arrangement.

98. (1) If an arrangement is declared to be an impermissible avoidance arrangement, then the consequences, in relation to tax, of the arrangement, including denial of tax benefit or a benefit under a tax treaty, shall be determined, in such manner as is deemed appropriate, in the circumstances of the case, including by way of but not limited to the following, namely:—

(a) disregarding, combining or recharacterising any step in, or a part or whole of, the impermissible avoidance arrangement;

(b) treating the impermissible avoidance arrangement as if it had not been entered into or carried out;

(c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;

(d) deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;

(e) reallocating amongst the parties to the arrangement—

(i) any accrual, or receipt, of a capital or revenue nature; or

(ii) any expenditure, deduction, relief or rebate;

(f) treating—

(i) the place of residence of any party to the arrangement; or

(ii) the *situs* of an asset or of a transaction,

at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or

(g) considering or looking through any arrangement by disregarding any corporate structure.

(2) For the purposes of sub-section (1),—

(i) any equity may be treated as debt or *vice versa*;

(ii) any accrual, or receipt, of a capital nature may be treated as of revenue nature or *vice versa*; or

(iii) any expenditure, deduction, relief or rebate may be recharacterised.

Treatment of
connected
person and
accommodat-
ing party.

99. For the purposes of this Chapter, in determining whether a tax benefit exists—

(i) the parties who are connected persons in relation to each other may be treated as one and the same person;

(ii) any accommodating party may be disregarded;

(iii) such accommodating party and any other party may be treated as one and the same person;

(iv) the arrangement may be considered or looked through by disregarding any corporate structure.

100. The provisions of this Chapter shall apply in addition to, or in lieu of, any other basis for determination of tax liability.

Application
of Chapter.

101. The provisions of this Chapter shall be applied in accordance with such guidelines and subject to such conditions and the manner as may be prescribed.

Framing of
guidelines.

102. In this Chapter, unless the context otherwise requires,—

Definitions.

(1) "arrangement" means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding;

(2) "asset" includes property, or right, of any kind;

(3) "associated person", in relation to a person, means—

(a) any relative of the person, if the person is an individual;

(b) any director of the company or any relative of such director, if the person is a company;

(c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member if the person is a firm or association of persons or body of individuals;

(d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;

(e) any individual who has a substantial interest in the business of the person or any relative of such individual;

(f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member;

(g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member have a substantial interest in the business of the person, or family or any relative of such director, partner or member;

(h) any other person who carries on a business, if—

(i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or

(ii) the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person;

(4) "benefit" includes a payment of any kind whether in tangible or intangible form;

(5) "connected person" means any person who is connected directly or indirectly to another person and includes associated person;

(6) "fund" includes—

(a) any cash;

(b) cash equivalents; and

(c) any right, or obligation, to receive, or pay, the cash or cash equivalent;

(7) "party" means any person including a permanent establishment which participates or takes part in an arrangement;

(8) "relative" shall have the meaning assigned to it in the *Explanation* to clause (vi) of sub-section (2) of section 56;

(9) a person shall be deemed to have a substantial interest in the business, if—

(a) in a case where the business is carried on by a company, such person is, at any time during the financial year, the beneficial owner of equity shares carrying twenty per cent. or more, of the voting power; or

(b) in any other case, such person is, at any time during the financial year, beneficially entitled to twenty per cent. or more, of the profits of such business;

(10) "step" includes a measure or an action, particularly one of a series taken in order to deal with or achieve a particular thing or object in the arrangement;

(11) "tax benefit" means—

(a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or

(b) an increase in a refund of tax or other amount under this Act; or

(c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or

(d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or

(e) a reduction in total income including increase in loss, in the relevant previous year or any other previous year;

(12) "tax treaty" means an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A.

Amendment
of section
111A.

42. In section 111A of the Income-tax Act, in sub-section (1), in the proviso, for the words "ten per cent.", the words "fifteen per cent." shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2009.

Amendment of
section 112.

43. In section 112 of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2013,—

(A) in clause (c), for sub-clause (ii), the following sub-clauses shall be substituted namely:—

"(ii) the amount of income-tax calculated on long term capital gains [except where such gain arises from transfer of capital asset referred to in sub-clause (iii)] at the rate of twenty per cent.; and

(iii) the amount of income-tax on long term capital gains arising from the transfer of a capital asset, being unlisted securities, calculated at the rate of ten per cent. on the capital gains in respect of such asset as computed without giving effect to the first and second proviso to section 48.”;

(B) in the *Explanation*, for clause (a), the following clauses shall be substituted, namely:—

‘(a) the expression “securities” shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(aa) “listed securities” means the securities which are listed on any recognised stock exchange in India;

(ab) “unlisted securities” means securities other than listed securities;’.

44. In section 115A of the Income-tax Act, with effect from the 1st day of July, 2012, in sub-section (1), in clause (a),—

Amendment
of section
115A.

(a) in sub-clause (ii), for the word, brackets, figures and letter “clause (iia)”, the words, brackets, figures and letters “sub-clause (iia) or sub-clause (iiaa)” shall be substituted;

(b) after sub-clause (iia), the following sub-clause shall be inserted, namely:—

“(iiaa) interest of the nature and extent referred to in section 194LC; or”;

(c) in item (BA), after the word, brackets, figures and letter “sub-clause (iia)”, the words, brackets, figures and letters “or sub-clause (iiaa)” shall be inserted;

(d) in item (D), after the word, brackets, figures and letter “sub-clause (iia)”, the word, brackets, figures and letters “, sub-clause (iiaa)” shall be inserted.

45. In section 115BBA of the Income-tax Act, with effect from the 1st day of April, 2013,—

Amendment
of section
115BBA.

(a) in sub-section (1),—

(i) in clause (b), the word “; or” shall be inserted at the end;

(ii) after clause (b), and before the words “the income-tax payable by the assessee”, the following clause shall be inserted, namely:—

“(c) being an entertainer, who is not a citizen of India and is a non-resident, includes any income received or receivable from his performance in India.”;

(iii) for the words, brackets and letters “clause (a) or clause (b)”, wherever they occur, the words, brackets and letters “clause (a) or clause (b) or clause (c)” shall respectively be substituted;

(iv) in clause (i), after the words “the income-tax payable by the assessee shall be the aggregate of—”, for the words “ten per cent.”, the words “twenty per cent.” shall be substituted;

(b) in sub-section (2), in clause (a), for the words, brackets and letters “clause (a) or clause (b)”, the words, brackets and letters “clause (a) or clause (b) or clause (c)” shall be substituted.

46. In section 115BBD of the Income-tax Act, in sub-section (1), after the words, figures and letters “the 1st day of April, 2012”, the words, figures and letters “or beginning on the 1st day of April, 2013” shall be inserted with effect from the 1st day of April, 2013.

Amendment
of section
115BBD.

47. After section 115BBD of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2013, namely:—

Insertion of
new section
115BBE.

Tax on
income
referred to in
section 68 or
section 69 or
section 69A
or section
69B or
section 69C
or section
69D

“115BBE. (1) Where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent.; and

(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).”

Amendment
of section
115JB.

48. In section 115JB of the Income-tax Act,—

(A) in sub-section (2), with effect from the 1st day of April, 2013,—

(i) for the portion beginning with the words “Every assessee,” and ending with the words and figures “the Companies Act, 1956:”, the following shall be substituted, namely:—

1 of 1956.

“Every assessee,—

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956; or

1 of 1956.

(b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 is applicable, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company:”;

1 of 1956.

(ii) in *Explanation 1*, after clause (i), for the words, brackets and letters “if any amount referred to in clauses (a) to (i) is debited to the profit and loss account, and as reduced by,—”, the following shall be substituted, namely:—

“(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset,

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by,—”;

(iii) after *Explanation 2*, the following *Explanation* shall be inserted, namely:—

“*Explanation 3.*—For the removal of doubts, it is hereby clarified that for the purposes of this section, the assessee, being a company to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 is applicable, has, for an assessment year commencing on or before the 1st day of April, 2012, an option to prepare its profit and loss account for the relevant previous year either in accordance with the provisions of Part II and Part III of Schedule VI to the Companies Act, 1956 or in accordance with the provisions of the Act governing such company.”;

1 of 1956.

(B) after sub-section (5), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from 1st day of April, 2001, namely:—

“(5A) The provisions of this section shall not apply to any income accruing or arising to a company from life insurance business referred to in section 115B.”.

49. In Chapter XII-BA of the Income-tax Act, in the heading, for the words "LIMITED LIABILITY PARTNERSHIPS", the words "PERSONS OTHER THAN A COMPANY" shall be substituted with effect from the 1st day of April, 2013.

Amendment
of Chapter
XII-BA.

50. For section 115JC of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2013, namely:—

Substitution
of new
section for
section
115JC.
Special
provisions
for payment
of tax by
certain
persons other
than a
company.

'115JC. (1) Notwithstanding anything contained in this Act, where the regular income-tax payable for a previous year by a person, other than a company, is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

(2) Adjusted total income referred to in sub-section (1) shall be the total income before giving effect to this Chapter as increased by—

(i) deductions claimed, if any, under any section (other than section 80P) included in Chapter VI-A under the heading "C.—Deductions in respect of certain incomes"; and

(ii) deduction claimed, if any, under section 10AA.

(3) Every person to whom this section applies shall obtain a report, in such form as may be prescribed, from an accountant, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report on or before the due date of furnishing of return of income under sub-section (1) of section 139.

51. In section 115JD of the Income-tax Act, in sub-section (1), for the words, figures and letters "a limited liability partnership under section 115JC shall be allowed to it", the words, figures and letters "a person under section 115JC shall be allowed to him" shall be substituted with effect from the 1st day of April, 2013.

Amendment
of section
115JD.

52. In section 115JE of the Income-tax Act, for the words "a limited liability partnership", the words "a person" shall be substituted with effect from the 1st day of April, 2013.

Amendment
of section
115JE.

53. After section 115JE of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2013, namely:—

Insertion of
new section
115JEE.

'115JEE. (1) The provisions of this Chapter shall apply to a person who has claimed any deduction under—

Application
of this
Chapter to
certain
persons.

(a) any section (other than section 80P) included in Chapter VI-A under the heading "C.—Deductions in respect of certain incomes"; or

(b) section 10AA.

(2) The provisions of this Chapter shall not apply to an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, if the adjusted total income of such person does not exceed twenty lakh rupees.

54. In section 115JF of the Income-tax Act, with effect from the 1st day of April, 2013,—

Amendment
of section
115JF.

(i) clause (c) shall be omitted;

(ii) in clause (d), for the words "a limited liability partnership on its total income", the words "a person on his total income" shall be substituted.

Insertion of
new Chapter
XII-BB.

55. After Chapter XII-BA, the following Chapter shall be inserted with effect from the 1st day of April, 2013, namely:—

“CHAPTER XII-BB

SPECIAL PROVISIONS RELATING TO CONVERSION OF INDIAN BRANCH OF A FOREIGN BANK INTO A SUBSIDIARY COMPANY

Conversion
of an Indian
branch of
foreign
company
into
subsidiary
Indian
company.

115JG. (1) Where a foreign company is engaged in the business of banking in India through its branch situate in India and such branch is converted into a subsidiary company thereof, being an Indian company (hereafter referred to as an Indian subsidiary company) in accordance with the scheme framed by the Reserve Bank of India, then, notwithstanding anything contained in the Act and subject to the conditions as may be notified by the Central Government in this behalf,—

(i) the capital gains arising from such conversion shall not be chargeable to tax in the assessment year relevant to the previous year in which such conversion takes place;

(ii) the provisions of this Act relating to treatment of unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in the case of the foreign company and Indian subsidiary company shall apply with such exceptions, modifications and adaptations as may be specified in that notification.

(2) In case of failure to comply with any of the conditions specified in the scheme or in the notification issued under sub-section (1), all the provisions of this Act shall apply to the foreign company and the said Indian subsidiary company without any benefit, exemption or relief under sub-section (1).

(3) Where, in a previous year, any benefit, exemption or relief has been claimed and granted to the foreign company or the Indian subsidiary company in accordance with the provisions of sub-section (1) and, subsequently, there is failure to comply with any of the conditions specified in the scheme or in the notification issued under sub-section (1), then,—

(i) such benefit, exemption or relief shall be deemed to have been wrongly allowed;

(ii) the Assessing Officer may, notwithstanding anything contained in this Act, re-compute the total income of the assessee for the said previous year and make the necessary amendment; and

(iii) the provisions of section 154 shall, so far as may be, apply thereto and the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the failure to comply with the condition referred to in sub-section (1) takes place.

(4) Every notification issued under this section shall be laid before each House of Parliament.”

Amendment
of section
115-O.

56. In section 115-O of the Income-tax Act, in sub-section (1A), in clause (i), with effect from the 1st day of July, 2012,—

(i) in sub-clause (a), the word “and” shall be inserted at the end;

(ii) in sub-clause (b), for the words “paid tax under this section on such dividend; and”, the words “paid the tax which is payable under this section on such dividend:” shall be substituted;

(iii) sub-clause (c) shall be omitted.

57. In section 115U of the Income-tax Act,—

Amendment
of section
115U.

(i) with effect from the 1st day of April, 2013,—

(a) in sub-section (1), for the words “income received”, at both the places where they occur, the words “income accruing or arising to or received” shall respectively be substituted;

(b) in sub-section (2),—

(i) for the words “The person responsible for making”, the words “The person responsible for crediting or making” shall be substituted;

(ii) for the words “to the person receiving such income”, the words “to the person who is liable to tax in respect of such income” shall be substituted;

(iii) for the words “income paid”, the words “income paid or credited” shall be substituted;

(c) in sub-section (3),—

(i) for the words “income paid”, the words “income paid or credited” shall be substituted;

(ii) for the words “the person receiving such income as it had been”, the words, brackets and figure “the person referred to in sub-section (1) as it had been” shall be substituted;

(iii) for the words “had accrued”, the words “had accrued or arisen” shall be substituted;

(d) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) The income accruing or arising to or received by the venture capital company or venture capital fund, during a previous year, from investments made in venture capital undertaking if not paid or credited to the person referred to in sub-section (1), shall be deemed to have been credited to the account of the said person on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year.”;

(ii) the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted with effect from the 1st day of July, 2012, namely:—

“*Explanation 2.*—For the removal of doubts, it is hereby declared that any income which has been included in total income of the person referred to in sub-section (1) in a previous year, on account of it having accrued or arisen in the said previous year, shall not be included in the total income of such person in the previous year in which such income is actually paid to him by the venture capital company or the venture capital fund.”.

Amendment
of section
115VG.

58. In section 115VG of the Income-tax Act, in sub-section (3), for the Table, the following Table shall be substituted with effect from the 1st day of April, 2013, namely:—

“TABLE

Qualifying ship having net tonnage	Amount of daily tonnage income
(1)	(2)
up to 1,000	Rs. 70 for each 100 tons
exceeding 1,000 but not more than 10,000	Rs. 700 <i>plus</i> Rs. 53 for each 100 tons exceeding 1,000 tons
exceeding 10,000 but not more than 25,000	Rs. 5,470 <i>plus</i> Rs. 42 for each 100 tons exceeding 10,000 tons
exceeding 25,000	Rs. 11,770 <i>plus</i> Rs. 29 for each 100 tons exceeding 25,000 tons.”

Amendment
of section
139.

59. In section 139 of the Income-tax Act, in sub-section (1),—

(a) after the third proviso, the following proviso shall be inserted, namely:—

“Provided also that a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6, who is not required to furnish a return under this sub-section and who during the previous year has any asset (including any financial interest in any entity) located outside India or signing authority in any account located outside India, shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed.”;

(b) in *Explanation 2*,—

(i) in clause (a),—

(A) after the words “the assessee”, the words, brackets and letters “other than an assessee referred to in clause (aa)” shall be inserted;

(B) in sub-clause (i), the words, brackets and letters “other than a company referred to in clause (aa)” shall be omitted;

(ii) in clause (aa), for the words “being a company, which”, the word “who” shall be substituted.

Amendment
of section
140A.

60. In section 140A of the Income-tax Act, with effect from the 1st day of April, 2013,—

(i) in sub-section (1), in clause (v), after the word, figures and letters “section 115JAA”, the words, figures and letters “or section 115JD” shall be inserted;

(ii) in sub-section (1A), in clause (i), in sub-clause (e), after the word, figures and letters “section 115JAA”, the words, figures and letters “or section 115JD” shall be inserted;

(iii) in sub-section (1B), in the *Explanation*, in clause (iv), after the word, figures and letters “section 115JAA”, the words, figures and letters “or section 115JD” shall be inserted.”.

Amendment
of section
143.

61. In section 143 of the Income-tax Act,—

(a) after sub-section (1C), the following sub-section shall be inserted with effect from the 1st day of July, 2012, namely:—

“(1D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2).”;

(b) in sub-section (3), after the second proviso, the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2009, namely:—

“Provided also that notwithstanding anything contained in the first and the second provisos, no effect shall be given by the Assessing Officer to the provisions of clause (23C) of section 10 in the case of a trust or institution for a previous year, if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in such previous year, whether or not the approval granted to such trust or institution or notification issued in respect of such trust or institution has been withdrawn or rescinded.”

62. After section 144B of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2014, namely:—

Insertion of
new section
144BA.

“144BA. (1) If, the Assessing Officer, at any stage of the assessment or reassessment proceedings before him having regard to the material and evidence available, considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement and to determine the consequence of such an arrangement within the meaning of Chapter X-A, then, he may make a reference to the Commissioner in this regard.

Reference to
Commis-
sioner in
certain cases.

(2) The Commissioner shall, on receipt of a reference under sub-section (1), if he is of the opinion that the provisions of Chapter X-A are required to be invoked, issue a notice to the assessee, setting out the reasons and basis of such an opinion, for submitting objections, if any, and providing an opportunity of being heard to the assessee within such period, not exceeding sixty days, as may be specified in the notice.

(3) If the assessee does not furnish any objection to the notice within the time specified in the notice issued under sub-section (2), the Commissioner shall issue such directions as it deems fit in respect of declaration of the arrangement to be an impermissible avoidance arrangement.

(4) In case the assessee objects to the proposed action, and the Commissioner, after hearing the assessee in the matter, is not satisfied by the explanation of the assessee, then, he shall make a reference in the matter to the Approving Panel for the purpose of declaration of the arrangement as an impermissible avoidance arrangement.

(5) If the Commissioner is satisfied, after having heard the assessee that the provisions of Chapter X-A are not to be invoked, he shall by an order in writing communicate the same to the Assessing Officer with a copy to the assessee.

(6) The Approving Panel, on receipt of reference from the Commissioner under sub-section (4) shall issue such directions, as it deems fit, in respect of the declaration of the arrangement as an impermissible avoidance arrangement in accordance with the provisions of Chapter X-A including specifying the previous year or years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.

(7) No direction under sub-section (6) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the Revenue, as the case may be.

(8) The Approving Panel may, before issuing any direction under sub-section (6),—

(i) if it is of the opinion that any further inquiry in the matter is necessary, direct the Commissioner to make such further inquiry or cause to make such further inquiry to be made by any other income-tax authority and furnish a report containing the results of such inquiry to it; or

- (ii) call for and examine such records related to the matter as it deems fit; or
- (iii) require the assessee to furnish such document and evidence as it may so direct.

(9) If the members of the Approving Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction, issued by the Approving Panel under sub-section (6) or the Commissioner under sub-section (3), shall be binding on the Assessing Officer and the Assessing Officer on receipt of the directions shall proceed to complete the proceedings referred to in sub-section (1) in accordance with the directions and provisions of Chapter X-A.

(11) If any direction issued under sub-section (6) specifies that declaration of the arrangement as impermissible avoidance arrangement is applicable for any previous year to which the proceedings referred to in sub-section (1) pertains, then, the Assessing Officer while completing any assessment or reassessment proceedings of the assessment year relevant to such other previous year shall do so in accordance with such directions and the provisions of Chapter X-A and it shall not be necessary for him to seek fresh direction on the issue for the relevant assessment year.

(12) No order of assessment or reassessment shall be passed by the Assessing Officer without the prior approval of the Commissioner if any tax consequences have been determined in the order under the provisions of Chapter X-A pursuant to a direction issued under sub-section (6) or sub-section (3) declaring the arrangement as impermissible avoidance arrangement.

(13) No direction under sub-section (6) shall be issued after a period of six months from the end of the month in which the reference under sub-section (4) was received by the Approving Panel.

(14) The Board shall, for the purposes of this section constitute an Approving Panel consisting of not less than three members, being—

- (i) income-tax authorities not below the rank of Commissioner; and
- (ii) an officer of the Indian Legal Service not below the rank of Joint Secretary to the Government of India.

(15) The Board may make rules for the purposes of the efficient functioning of the Approving Panel and expeditious disposal of the references received under sub-section (4)."

63. In section 144C of the Income-tax Act,—

(a) in sub-section (4), for the words and figures "in section 153", the words, figures and letter "in section 153 or section 153B" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 2009;

(b) after sub-section (8), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2009, namely:—

"*Explanation.*—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee."

(c) in sub-section (13), for the words and figures "in section 153", the words, figures and letter "in section 153 or section 153B" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 2009;

(d) after sub-section (14), the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely:—

"(14A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Commissioner under sub-section (12) of section 144BA."

Amendment
of section
144C.

64. In section 147 of the Income-tax Act, with effect from the 1st day of July, 2012—

Amendment
of section
147.

(i) after the first proviso, the following proviso shall be inserted, namely:—

“Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.”;

(ii) in the second proviso, for the words “Provided further”, the words “Provided also” shall be substituted;

(iii) in *Explanation 2*,—

(I) after clause (b), the following clause shall be inserted, namely:—

“(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E.”;

(II) after clause (c), the following clause shall be inserted, namely:—

“(d) where a person is found to have any asset (including financial interest in any entity) located outside India.”;

(iv) after *Explanation 3*, the following *Explanation* shall be inserted, namely:—

“*Explanation 4*.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.”.

65. In section 149 of the Income-tax Act, with effect from the 1st day of July, 2012,—

Amendment
of section
149.

(A) in sub-section (1),—

(i) in clause (a), after the word, brackets and letter “clause (b)”, the words, brackets and letter “or clause (c)” shall be inserted;

(ii) after clause (b), the following clause shall be inserted, namely:—

“(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.”;

(B) in sub-section (3), for the words “two years”, the words “six years” shall be substituted;

(C) after sub-section (3), the following *Explanation* shall be inserted, namely:—

“*Explanation*.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.”.

66. In section 153 of the Income-tax Act,—

Amendment
of section
153.

(A) with effect from the 1st day of July, 2012,—

(i) in sub-section (1),—

(a) in the first proviso, for the words, figures and letters “on the 1st day of April, 2004 or any subsequent assessment year”, the words, figures and letters “on or after the 1st day of April, 2004 but before the 1st day of April, 2010” shall be substituted;

(b) in the second proviso, for the words, figures and letters "on the 1st day of April, 2005 or any subsequent assessment year", the words, figures and letters "on or after the 1st day of April, 2005 but before the 1st day of April, 2009" shall be substituted;

(c) after the second proviso, the following proviso shall be inserted, namely:—

'Provided also that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st day of April, 2009 or any subsequent assessment year and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA—

(i) is made before the 1st day of July, 2012, but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of July, 2012,

the provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words "two years", the words "three years" had been substituted;";

(ii) in sub-section (2),—

(a) in the second proviso, after the words, figures and letters "on or after the 1st day of April, 2005", the words, figures and letters "but before the 1st day of April, 2011" shall be inserted;

(b) in the third proviso, after the words, figures and letters "the 1st day of April, 2006", the words, figures and letters "but before the 1st day of April, 2010" shall be inserted;

(c) after the third proviso, the following proviso shall be inserted, namely:—

'Provided also that where the notice under section 148 was served on or after the 1st day of April, 2010 and during the course of the proceedings for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA—

(i) is made before the 1st day of July, 2012, but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of July, 2012,

the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "two years" had been substituted;";

(iii) in sub-section (2A),—

(a) in the second proviso, after the words, figures and letters "the 1st day of April, 2005", the words, figures and letters "but before the 1st day of April, 2011" shall be inserted;

(b) in the third proviso, after the words, figures and letters "the 1st day of April, 2006", the words, figures and letters "but before the 1st day of April, 2010" shall be inserted;

(c) after the third proviso, the following proviso shall be inserted, namely:—

‘Provided also that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2010, and during the course of the proceedings for the fresh assessment of total income, a reference under sub-section (1) of section 92CA—

(i) is made before the 1st day of July, 2012, but an order under sub-section (3) of section 92CA has not been made before such date; or

(ii) is made on or after the 1st day of July, 2012,

the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words “one year”, the words “two years” had been substituted;”;

(B) in *Explanation 1*,—

(a) in clause (viii), for the words “six months”, the words “one year” shall be substituted with effect from the 1st day of July, 2012;

(b) after clause (viii) and before the words “shall be excluded”, the following clause shall be inserted with effect from the 1st day of April, 2013, namely:—

“(ix) the period commencing from the date on which a reference for declaration of an arrangement to be impermissible avoidance arrangement is received by the Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer.”.

67. In section 153A of the Income-tax Act, in sub-section (1), after the second proviso, the following proviso shall be inserted with effect from the 1st day of July, 2012, namely:—

Amendment
of section
153A.

“Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.”.

68. In section 153B of the Income-tax Act,—

Amendment
of section
153B.

(1) in sub-section (1) with effect from the 1st day of July, 2012,—

(i) in the second proviso, for the words, figures and letters “on the 1st day of April, 2004 or any subsequent financial year”, the words, figures and letters “on or after the 1st day of April, 2004 but before the 1st day of April, 2010” shall be substituted;

(ii) in the third proviso, for the words, figures and letters “on the 1st day of April, 2005 or any subsequent financial year”, the words, figures and letters “on or after the 1st day of April, 2005 but before the 1st day of April, 2009” shall be substituted;

(iii) after the third proviso, the following proviso shall be inserted, namely:—

‘Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed

during the financial year commencing on the 1st day of April, 2009 or any subsequent financial year and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of July, 2012, but an order under sub-section (3) of section 92CA has not been made before such date; or

(ii) is made on or after the 1st day of July, 2012,

the provisions of clause (a) or clause (b) of this sub-section, shall, notwithstanding anything contained in clause (i) of the second proviso, have effect as if for the words “two years”, the words “three years” had been substituted.”;

(iv) in the fourth proviso, for the words, figures and letters “on the 1st day of April, 2005 or any subsequent financial year”, the words, figures and letters “on or after the 1st day of April, 2005 but before the 1st day of April, 2009” shall be substituted;

(v) after the fourth proviso, the following proviso shall be inserted, namely:—

“Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2009 or any subsequent financial year and during the course of proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of July, 2012 but an order under sub-section (3) of section 92CA has not been made before such date; or

(ii) is made on or after the 1st day of July, 2012,

the period of limitation for making the assessment or reassessment in case of such other person shall, notwithstanding anything contained in clause (ii) of the second proviso, be the period of thirty-six months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twenty-four months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.”;

(II) in the *Explanation*,—

(a) in clause (viii), for the words “six months”, the words “one year” shall be substituted with effect from the 1st day of July, 2012;

(b) after clause (viii) and before the words “shall be excluded”, the following clause shall be inserted with effect from the 1st day of April, 2013, namely:—

“(ix) the period commencing from the date on which a reference for declaration of an arrangement to be impermissible avoidance arrangement is received by the Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer.”.

69. In section 153C of the Income-tax Act, in sub-section (1), after the proviso, the following proviso shall be inserted with effect from the 1st day of July, 2012, namely:—

Amendment
of section
153C.

“Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.”.

70. In section 154 of the Income-tax Act, with effect from the 1st day of July, 2012,—

Amendment
of section
154.

(a) in sub-section (1), after clause (b), the following clause shall be inserted, namely:—

“(c) amend any intimation under sub-section (1) of section 200A.”;

(b) in sub-section (2), in clause (b), for the words “by the assessee”, the words “by the assessee or by the deductor,” shall be substituted;

(c) in sub-section (3), for the words “the assessee”, wherever they occur, the words “the assessee or the deductor” shall respectively be substituted;

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor, the Assessing Officer shall make any refund which may be due to such assessee or the deductor.”;

(e) in sub-section (6), for the words “already made, the Assessing Officer shall serve on the assessee”, the words “already made or otherwise increasing the liability of the assessee or the deductor, the Assessing Officer shall serve on the assessee or the deductor, as the case may be” shall be substituted;

(f) in sub-section (8), for the words “by the assessee”, the words “by the assessee or by the deductor” shall be substituted.

71. In section 156 of the Income-tax Act, for the proviso, the following proviso shall be substituted with effect from the 1st day of July, 2012, namely:—

Amendment
of section
156.

“Provided that where any sum is determined to be payable by the assessee or by the deductor under sub-section (1) of section 143 or sub-section (1) of section 200A, the intimation under those sub-sections shall be deemed to be a notice of demand for the purposes of this section.”.

72. In section 193 of the Income-tax Act, in the proviso, for clause (v), the following clause shall be substituted with effect from the 1st day of July, 2012, namely:—

Amendment
of section
193.

“(v) any interest payable to an individual or a Hindu undivided family, who is resident in India, on any debenture issued by a company in which the public are substantially interested, if—

(a) the amount of interest or, as the case may be, the aggregate amount of such interest paid or likely to be paid on such debenture during the financial year by the company to such individual or Hindu undivided family does not exceed five thousand rupees; and

(b) such interest is paid by the company by an account payee cheque.”.

73. In section 194E of the Income-tax Act, with effect from the 1st day of July, 2012,—

Amendment
of section
194E.

(a) after the words and brackets “is payable to a non-resident sportsman (including an athlete)”, the words “or an entertainer” shall be inserted;

(b) for the words "ten per cent.", the words "twenty per cent." shall be substituted.

Amendment
of section
194J.

74. In section 194J of the Income-tax Act, in sub-section (1), after clause (b), the following clause shall be inserted with effect from the 1st day of July, 2012, namely:—

"(ba) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or".

Amendment
of section
194LA.

75. In section 194LA of the Income-tax Act, in the proviso, for the words "one hundred thousand rupees", the words "two hundred thousand rupees" shall be substituted with effect from the 1st day of July, 2012.

Insertion of
new section
194LC.

76. After section 194LB of the Income-tax Act, the following section shall be inserted with effect from the 1st day of July, 2012, namely:—

Income by
way of
interest from
Indian
company.

'194LC. (1) Where any income by way of interest referred to in sub-section (2) is payable to a non-resident, not being a company or to a foreign company by a specified company, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of five per cent.

(2) The interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company,—

(i) in respect of monies borrowed by it at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015 in foreign currency, from a source outside India,—

(a) under a loan agreement; or

(b) by way of issue of long-term infrastructure bonds,

as approved by the Central Government in this behalf; and

(ii) to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment.

Explanation.—For the purpose of this section—

(a) "foreign currency" shall have the meaning assigned to it in clause (m) of section 2 of the Foreign Exchange Management Act, 1999; 42 of 1999.

(b) "specified company" means an Indian company.

Amendment
of section
195.

77. In section 195 of the Income-tax Act,—

(a) in sub-section (1),—

(i) for the words "any interest", the words, brackets, figures and letters "any interest (not being interest referred to in section 194LB or section 194LC)" shall be substituted;

(ii) the *Explanation* shall be numbered as *Explanation 1* thereof, and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1962, namely:—

"*Explanation 2.*—For the removal of doubts, it is hereby clarified that the obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends

and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has—

(i) a residence or place of business or business connection in India; or

(ii) any other presence in any manner whatsoever in India.”;

(b) after sub-section (6), the following sub-section shall be inserted with effect from the 1st day of July, 2012, namely:—

“(7) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.”.

78. In section 197A of the Income-tax Act, with effect from the 1st day of July, 2012,—

Amendment
of section
197A.

(a) in sub-section (1C), for the words “sixty-five years”, the words “sixty years” shall be substituted;

(b) after sub-section (1E), the following sub-section shall be inserted, namely:—

“(1F) Notwithstanding anything contained in this Chapter, no deduction of tax shall be made from such specified payment to such institution, association or body or class of institutions, associations or bodies as may be notified by the Central Government in the Official Gazette, in this behalf.”.

79. In section 201 of the Income-tax Act,—

Amendment
of section
201.

(A) with effect from the 1st day of July, 2012,—

(i) in sub-section (1),—

(a) before the proviso, the following proviso shall be inserted, namely:—

“Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.”;

(b) in the proviso, for the words “Provided that”, the words “Provided further that” shall be substituted;

(ii) after sub-section (1A), the following proviso shall be inserted, namely:—

“Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.”;

(B) in sub-section (3), in clause (ii), for the words “four years”, the words “six years” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2010;

(C) after sub-section (4), the following *Explanation* shall be inserted with effect from the 1st day of July, 2012, namely:—

‘*Explanation.*—For the purposes of this section, the expression “accountant” shall have the meaning assigned to it in the *Explanation* to sub-section (2) of section 288.’

Amendment
of section
204.

80. In section 204 of the Income-tax Act, after clause (iii) and before the *Explanation*, the following clause shall be inserted with effect from the 1st day of July, 2012, namely:—

“(iv) in the case of credit, or as the case may be, payment of any sum chargeable under the provisions of this Act made by or on behalf of the Central Government or the Government of a State, the drawing and disbursing officer or any other person, by whatever name called, responsible for crediting, or as the case may be, paying such sum.”.

Amendment
of section
206C.

81. In section 206C of the Income-tax Act, with effect from the 1st day of July, 2012,—

(a) in sub-section (1), in the Table, after serial number (vi) and the entries relating thereto, the following serial number and entries shall be inserted, namely:—

Sl. No.	Nature of goods	Percentage
(1)	(2)	(3)
“(vii)”	Minerals, being coal or lignite or iron ore	one per cent.”;

(b) in sub-section (1A), after the words “articles or things”, the words “or for the purposes of generation of power” shall be inserted;

(c) after sub-section (1C), the following sub-section shall be inserted, namely:—

“(1D) Every person, being a seller, who receives any amount in cash as consideration for sale of bullion (excluding any coin or any other article weighing ten grams or less) or jewellery, shall, at the time of receipt of such amount in cash, collect from the buyer, a sum equal to one per cent. of sale consideration as income-tax, if such consideration,—

(i) for bullion, exceeds two hundred thousand rupees; or

(ii) for jewellery, exceeds five hundred thousand rupees.”;

(d) in sub-section (2), after the words, brackets, figure and letter “or sub-section (1C)”, the words, brackets, figure and letter “or sub-section (1D)” shall be inserted;

(e) in sub-section (3), after the words, brackets, figure and letter “or sub-section (1C)”, the words, brackets, figure and letter “or sub-section (1D)” shall be inserted;

(f) in sub-section (6A),—

(A) before the proviso, the following proviso shall be inserted, namely:—

“Provided that any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee—

(i) has furnished his return of income under section 139;

(ii) has taken into account such amount for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.”;

(B) in the proviso, for the words “Provided that”, the words “Provided further that” shall be substituted;

(g) in sub-section (7), the following proviso shall be inserted, namely:—

“Provided that in case any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is not deemed to be an assessee in default under the first proviso of sub-section (6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee.”;

(h) in sub-section (9), after the words, brackets, figure and letter “or sub-section (1C)” at both the places where they occur, the words, brackets, figure and letter “or sub-section (1D)” shall be inserted;

(i) in the *Explanation*, occurring at the end,—

(I) for clause (a), the following clauses shall be substituted, namely:—

“(a) “accountant” shall have the meaning assigned to it in the *Explanation* to sub-section (2) of section 288;

(aa) “buyer” with respect to—

(i) sub-section (I) means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (I) or the right to receive any such goods but does not include,—

(A) a public sector company, the Central Government, a State Government, and an embassy, a High Commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or

(B) a buyer in the retail sale of such goods purchased by him for personal consumption;

(ii) sub-section (1D) means a person who obtains in any sale, goods of the nature specified in the said sub-section;

(ab) “jewellery” shall have the meaning assigned to it in the *Explanation* to sub-clause (ii) of clause (14) of section 2.”;

(1f) in clause (c), after the words, brackets and figure “in sub-section (1)”, the words, brackets, figure and letter “or sub-section (1D)” shall be inserted.

Amendment
of section
207.

82. Section 207 of the Income-tax Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) The provisions of sub-section (1) shall not apply to an individual resident in India, who—

(a) does not have any income chargeable under the head “Profits and gains of business or profession”; and

(b) is of the age of sixty years or more at any time during the previous year.”

Amendment
of section
209.

83. In section 209 of the Income-tax Act, in sub-section (1), in clause (d), the following proviso shall be inserted, namely:—

“Provided that for computing liability for advance tax, income-tax calculated under clause (a) or clause (b) or clause (c) shall not, in each case, be reduced by the aforesaid amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income, if the person responsible for deducting tax has paid or credited such income without deduction of tax or it has been received or debited by the person responsible for collecting tax without collection of such tax.”

Amendment
of section
220.

84. In section 220 of the Income-tax Act, after sub-section (2A), the following sub-section shall be inserted, with effect from the 1st day of July, 2012, namely:—

“(2B) Notwithstanding anything contained in sub-section (2), where interest is charged under sub-section (1A) of section 201 on the amount of tax specified in the intimation issued under sub-section (1) of section 200A for any period, then, no interest shall be charged under sub-section (2) on the same amount for the same period.”

Amendment
of section
234A.

85. In section 234A of the Income-tax Act, in sub-section (1), in clause (vi), after the word, figures and letters “section 115JAA”, the words, figures and letters “or section 115JD” shall be inserted with effect from the 1st day of April, 2013.

Amendment
of section
234B.

86. In section 234B of the Income-tax Act, in sub-section (1), in *Explanation 1*, in clause (v), after the word, figures and letters “section 115JAA”, the words, figures and letters “or section 115JD” shall be inserted with effect from the 1st day of April, 2013.

Amendment
of section
234C.

87. In section 234C of the Income-tax Act, in sub-section (1), in the *Explanation*, in clause (v), after the word, figures and letters “section 115JAA”, the words, figures and letters “or section 115JD” shall be inserted with effect from the 1st day of April, 2013.

Amendment
of section,
234D.

88. In section 234D of the Income-tax Act, the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 2003, namely:—

“*Explanation 2.*—For the removal of doubts, it is hereby declared that the provisions of this section shall also apply to an assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed after the said date.”

Insertion of
new section
234E.

89. After section 234D of the Income-tax Act, the following sub-heading and section shall be inserted with effect from the 1st day of July, 2012, namely:—

“G.—*Levy of fee in certain cases*

Fee for
default in
furnishing
statements.

234E. (1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to

pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.

(2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.

(3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012."

90. In section 245C of the Income-tax Act, in sub-section (1), in the proviso, in the *Explanation*, in clause (b), for the words "at any time during the previous year", at both the places where they occur, the words "on the date of search" shall respectively be substituted with effect from the 1st day of July, 2012.

Amendment
of section
245C.

91. In section 245N of the Income-tax Act, with effect from the 1st day of April, 2013,—

Amendment
of section
245N.

(I) in clause (a), after sub-clause (iii) and before the proviso, the following sub-clause shall be inserted, namely:—

"(iv) a determination or decision by the Authority whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not.";

(II) in clause (b),—

(i) in sub-clause (iii), for the word "and", occurring at the end, the word "or" shall be substituted;

(ii) after sub-clause (iii), the following sub-clause shall be inserted, namely:—

"(iiia) is referred to in sub-clause (iv) of clause (a); and".

92. In section 245Q of the Income-tax Act, in sub-section (2), for the words "two thousand five hundred rupees", the words "ten thousand rupees or such fee as may be prescribed in this behalf, whichever is higher" shall be substituted with effect from the 1st day of July, 2012.

Amendment
of section
245Q.

93. In section 245R of the Income-tax Act, in sub-section (2), in the first proviso, in clause (iii), after the word, figures and letter "section 245N", the words, brackets, figures and letters "or in the case of an applicant falling in sub-clause (iiia) of clause (b) of section 245N" shall be inserted with effect from the 1st day of April, 2013.

Amendment
of section
245R.

Amendment
of section
246A.

94. In section 246A of the Income-tax Act, in sub-section (1),—

(i) for the words “Any assessee aggrieved”, the words “Any assessee or any deductor aggrieved” shall be substituted with effect from the 1st day of July, 2012;

(ii) in clause (a),—

(I) for the words and figures “section 143, where the assessee objects”, the words, figures, brackets and letter “section 143 or sub-section (1) of section 200A, where the assessee or the deductor objects” shall be substituted with effect from the 1st day of July, 2012;

(II) for the words “except an order passed in pursuance of directions of the Dispute Resolution Panel”, the brackets, words, figures and letters “[except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA]” shall be substituted with effect from the 1st day of April, 2013;

(iii) in clause (b), for the words “except an order passed in pursuance of directions of the Dispute Resolution Panel”, the brackets, words, figures and letters “[except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA]” shall be substituted with effect from the 1st day of April, 2013;

(iv) in clause (ba),—

(I) for the words, figures and letter “under section 153A”, the words, figures, letter and brackets “under section 153A [except an order passed in pursuance of directions of the Dispute Resolution Panel]” shall be substituted with effect from the 1st day of October, 2009;

(II) for the words “Dispute Resolution Panel”, the words, brackets, figures and letters “Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA” shall be substituted with effect from the 1st day of April, 2013;

(v) after clause (ba), the following clause shall be inserted with effect from the 1st day of July, 2012, namely:—

“(bb) an order of assessment or reassessment under sub-section (3) of section 92CD;”;

(vi) in clause (c), after the words “either of the said sections”, the words, brackets, figures and letters “except where it is in respect of an order referred to in sub-section (12) of section 144BA” shall be inserted with effect from the 1st day of April, 2013;

(vii) in clause (j), in sub-clause (B), after the word, figures and letters “section 271AAA”, the word, figures and letters “, section 271AAB” shall be inserted with effect from the 1st day of July, 2012.

95. In section 253 of the Income-tax Act,—

Amendment
of section
253.

(A) in sub-section (1),—

(i) in clause (d), for the word and figures “section 147”, the words, figures and letters “section 147 or section 153A or section 153C” shall be substituted with effect from the 1st day of October, 2009;

(ii) after clause (d), the following clause shall be inserted with effect from the 1st day of April, 2013, namely:—

“(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Commissioner as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order;”;

(B) with effect from the 1st day of July, 2012,—

(i) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) The Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel under sub-section (5) of section 144C in respect of any objection filed on or after the 1st day of July, 2012, by the assessee under sub-section (2) of section 144C in pursuance of which the Assessing Officer has passed an order completing the assessment or reassessment, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.”;

(ii) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) Every appeal under sub-section (2A) shall be filed within sixty days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel under sub-section (5) of section 144C.”;

(iii) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) or the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Assessing Officer (in pursuance of the directions of the Dispute Resolution Panel) or Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3) or sub-section (3A).”.

96. In section 254 of the Income-tax Act, in sub-section (2A), after the words, brackets and figures “under sub-section (1) or sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted with effect from the 1st day of July, 2012.

Amendment
of section
254.

97. In section 271 of the Income-tax Act, in sub-section (1), in *Explanation 7*, for the words “international transaction”, the words “international transaction or specified domestic transaction” shall be substituted with effect from the 1st day of April, 2013.

Amendment
of section
271.

Substitution
of new
section for
section
271AA.
Penalty for
failure to
keep and
maintain
information
and
document,
etc., in
respect of
certain
transactions.

98. For section 271AA of the Income-tax Act, the following section shall be substituted with effect from the 1st day of July, 2012, namely:—

“271AA. Without prejudice to the provisions of section 271 or section 271BA, if any person in respect of an international transaction,—

(i) fails to keep and maintain any such information and document as required by sub-section (1) or sub-section (2) of section 92D;

(ii) fails to report such transaction which he is required to do so; or

(iii) maintains or furnishes an incorrect information or document,

the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent. of the value of each international transaction entered into by such person.”

Amendment
of section
271AA.

99. In section 271AA of the Income-tax Act, as so substituted by section 93 of this Act, for the words “international transaction”, the words “international transaction or specified domestic transaction” shall be substituted with effect from the 1st day of April, 2013.

Amendment
of section
271AAA.

100. In section 271AAA of the Income-tax Act, in sub-section (1), after the words, figures and letters “on or after the 1st day of June, 2007”, the words, figures and letters “but before the 1st day of July, 2012” shall be inserted.

Insertion of
new section
271AAB.

Penalty
where search
has been
initiated.

101. After section 271AAA of the Income-tax Act, the following section shall be, inserted with effect from the 1st day of July, 2012, namely:—

“271AAB. (1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

(a) a sum computed at the rate of ten per cent. of the undisclosed income of the specified previous year, if such assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of twenty per cent. of the undisclosed income of the specified previous year, if such assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and

(ii) on or before the specified date—

(A) declares such income in the return of income furnished for the specified previous year; and

(B) pays the tax, together with interest, if any, in respect of the undisclosed income;

(c) a sum which shall not be less than thirty per cent. but which shall not exceed ninety per cent. of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).

(2) No penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Explanation.— For the purposes of this section,—

(a) “specified date” means the due date of furnishing of return of income under sub-section (1) of section 139 or the date on which the period specified in the notice issued under section 153A for furnishing of return of income expires, as the case may be;

(b) “specified previous year” means the previous year—

(i) which has ended before the date of search, but the date of furnishing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or

(ii) in which search was conducted;

(c) “undisclosed income” means—

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or

(B) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of search; or

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.

102. In section 271G of the Income-tax Act, for the words “international transaction”, at both the places where they occur, the words “international transaction or specified domestic transaction” shall respectively be substituted with effect from the 1st day of April, 2013.

Amendment
of section
271G.

103. After section 271G of the Income-tax Act, the following section shall be inserted with effect from the 1st day of July, 2012, namely:—

Insertion of
new section
271H.

“271H. (1) Without prejudice to the provisions of the Act, a person shall be liable to pay penalty, if, he—

Penalty for
failure to
furnish
statements,
etc.

(a) fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C; or

(b) furnishes incorrect information in the statement which is required to be delivered or cause to be delivered under sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(2) The penalty referred to in sub-section (1) shall be a sum which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

(3) Notwithstanding anything contained in the foregoing provisions of this section, no penalty shall be levied for the failure referred to in clause (a) of sub-section (1), if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he had delivered or cause to be delivered the statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C before the expiry of a period of one year from the time prescribed for delivering or causing to be delivered such statement.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or cause to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012."

Amendment
of section
272A.

104. In section 272A of the Income-tax Act, in sub-section (2), after the proviso, the following proviso shall be inserted with effect from the 1st day of July, 2012, namely:—

"Provided further that no penalty shall be levied under this section for the failure referred to in clause (k), if such failure relates to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or cause to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012."

Amendment
of section
273B.

105. In section 273B of the Income-tax Act, after the word, figures and letter "section 271G," the word, figures and letter "section 271H," shall be inserted with effect from the 1st day of July, 2012.

Amendment
of section
276C.

106. In section 276C of the Income-tax Act, with effect from the 1st day of July, 2012,—

(i) in sub-section (1),—

(a) in clause (i), for the words "one hundred thousand rupees", the words "twenty-five hundred thousand rupees" shall be substituted;

(b) in clause (ii), for the words "three years", the words "two years" shall be substituted;

(ii) in sub-section (2), for the words "three years", the words "two years" shall be substituted.

Amendment
of section
276CC.

107. In section 276CC of the Income-tax Act, with effect from the 1st day of July, 2012,—

(a) in clause (i), for the words "one hundred thousand rupees", the words "twenty-five hundred thousand rupees" shall be substituted;

(b) in clause (ii), for the words "three years", the words "two years" shall be substituted.

Amendment
of section
277.

108. In section 277 of the Income-tax Act, with effect from the 1st day of July, 2012,—

(a) in clause (i), for the words "one hundred thousand rupees", the words "twenty-five hundred thousand rupees" shall be substituted;

(b) in clause (ii), for the words "three years", the words "two years" shall be substituted.

109. In section 277A of the Income-tax Act, for the words "three years", the words "two years" shall be substituted with effect from the 1st day of July, 2012.

Amendment
of section
277A.

110. In section 278 of the Income-tax Act, with effect from the 1st day of July, 2012,—

Amendment
of section
278.

(a) in clause (i), for the words "one hundred thousand rupees", the words "twenty-five hundred thousand rupees" shall be substituted;

(b) in clause (ii), for the words "three years", the words "two years" shall be substituted.

111. In Chapter XXII of the Income-tax Act, after section 280, the following sections shall be inserted, with effect from the 1st day of July, 2012, namely:—

Insertion of
new sections
280A, 280B,
280C and
280D.

"280A. (1) The Central Government, in consultation with the Chief Justice of the High Court, may, for trial of offences punishable under this Chapter, by notification, designate one or more courts of Magistrate of the first class as Special Court for such area or areas or for such cases or class or group of cases as may be specified in the notification.

Special
Courts.

Explanation.— In this sub-section, "High Court" means the High Court of the State in which a Magistrate of first class designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

280B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974.

Offences
triable by
Special Court.

(a) the offences punishable under this Chapter shall be triable only by the Special Court, if so designated, for the area or areas or for cases or class or group of cases, as the case may be, in which the offence has been committed:

Provided that a court competent to try offences under section 292,—

(i) which has been designated as a Special Court under this section, shall continue to try the offences before it or offences arising under this Act after such designation;

(ii) which has not been designated as a Special Court may continue to try such offence pending before it till its disposal;

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed for trial.

280C. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court, shall try, an offence under this Chapter punishable with imprisonment not exceeding two years or with fine or with both, as a summons case, and the provisions of the Code of Criminal Procedure, 1973 as applicable in the case of trial of summons case, shall apply accordingly.

2 of 1974.

Trial of
offences as
summons
case.

280D. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and the person conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

2 of 1974.

Application
of Code of
Criminal
Procedure,
1973 to
proceedings
before Special
Court.

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly." 2 of 1974.

Insertion of
new section
292CC.

112. After section 292C of the Income-tax Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1976, namely:—

Authorisation
and assessment
in case of
search or
requisition.

"292CC. (1) Notwithstanding anything contained in this Act,—

(i) it shall not be necessary to issue an authorisation under section 132 or make a requisition under section 132A separately in the name of each person;

(ii) where an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.

(2) Notwithstanding that an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition."

Amendment
of section
296.

113. In section 296 of the Income-tax Act, after the word and figures "section 139", the words, brackets, figures and letters "or third proviso to sub-section (1) of section 153A or second proviso to sub-section (1) of section 153C" shall be inserted with effect from the 1st day of July, 2012.

Amendment
of Fourth
Schedule.

114. In the Fourth Schedule to the Income-tax Act, in Part A, in rule 3, in sub-rule (1), in the first proviso, for the words, figures and letters "the 31st day of March, 2012", the words, figures and letters "the 31st day of March, 2013" shall be substituted with effect from the 1st day of April, 2012.

Wealth-tax

Amendment
of section 2.

115. In section 2 of the Wealth-tax Act, 1957 (hereinafter referred to as the Wealth-tax Act), in clause (ea), in sub-clause (i), in item (1), for the words "five lakh rupees", the words "ten lakh rupees" shall be substituted with effect from the 1st day of April, 2013. 27 of 1957.

Amendment
of section 17.

116. In section 17 of the Wealth-tax Act, with effect from the 1st day of July, 2012,—

(a) in sub-section (1), after the second proviso, the following proviso shall be inserted and shall be deemed to have been inserted, namely:—

"Provided also that nothing contained in the first proviso shall apply in a case where any net wealth in relation to any asset (including financial interest in any entity) located outside India chargeable to tax, has escaped assessment for any assessment year:";

(b) in sub-section (1A),—

(i) in clause (a), after the word, brackets and letter "clause (b)", the words, brackets and letter "or clause (c)" shall be inserted;

(ii) after clause (b), the following clause shall be inserted, namely:—

"(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the net wealth in relation to

any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.”;

(iii) in the *Explanation*, after clause (b), the following clause shall be inserted, namely:—

“(c) where a person is found to have any asset (including financial interest in any entity) located outside India.”;

(iv) the *Explanation* shall be numbered as *Explanation 1* thereof, and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

“*Explanation 2*.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.”.

117. In section 17A of the Wealth-tax Act, with effect from the 1st day of July, 2012—

Amendment
of section
17A.

(i) in sub-section (1), in the second proviso, for the words, letters and figures “commencing on the 1st day of April, 2004 or any subsequent year”, the words, letters and figures “commencing on or after the 1st day of April, 2004 but before the 1st day of April, 2010” shall be substituted;

(ii) in sub-section (2), in the second proviso, for the words, letters and figures “after the 1st day of April, 2005”, the words, letters and figures “after the 1st day of April, 2005 but before the 1st day of April, 2011” shall be substituted;

(iii) in sub-section (3), in the second proviso, for the words, letters and figures “after the 1st day of April, 2005”, the words, letters and figures “after the 1st day of April, 2005 but before the 1st day of April, 2011” shall be substituted.

118. In section 45 of the Wealth-tax Act, after clause (j), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1957, namely:—

Amendment
of section 45.

“(k) the Reserve Bank of India incorporated under the Reserve Bank of India Act, 1934.”.

2 of 1934.

119. Notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any authority, all notices sent or purporting to have been sent, or taxes levied, demanded, assessed, imposed, collected or recovered or purporting to have been levied, demanded, assessed, imposed, collected or recovered under the provisions of Income-tax Act, 1961, in respect of income accruing or arising through or from the transfer of a capital asset situate in India in consequence of the transfer of a share or shares of a company registered or incorporated outside India or in consequence of an agreement, or otherwise, outside India, shall be deemed to have been validly made, and the notice, levy, demand, assessment, imposition, collection or recovery of tax shall be valid and shall be deemed always to have been valid and shall not be called in question on the ground that the tax was not chargeable or any ground including that it is a tax on capital gains arising out of transactions which have taken place outside India, and accordingly, any tax levied, demanded, assessed, imposed or deposited before the commencement of this Act and chargeable for a period prior to such commencement but not collected or recovered before such commencement, may be collected or recovered and appropriated in accordance with the provisions of the Income-tax Act, 1961 as amended by this Act, and the rules made thereunder and there shall be no liability or obligation to make any refund whatsoever.

43 of 1961.

Validation of
demands,
etc., under
Income-tax
Act, 1961 in
certain cases.

CHAPTER IV

INDIRECT TAXES

*Customs*Amendment
of section 2.

120. In the Customs Act, 1962 (hereinafter referred to as the Customs Act), in section 2, in clause (10), after the words "to be a customs airport", the words, brackets and letters "and includes a place appointed under clause (aa) of that section to be an air freight station" shall be inserted. 52 of 1962.

Amendment
of section 7.

121. In section 7 of the Customs Act, in sub-section (1), in clause (aa), for the words "container depots", the words "container depots or air freight stations" shall be substituted.

Insertion of
new section
28AAA.

122. After section 28AA of the Customs Act, the following section shall be inserted, namely:—

Recovery of
duties in
certain cases.

28AAA. (1) Where an instrument issued to a person has been obtained by him by means of—

(a) collusion; or

(b) wilful misstatement; or

(c) suppression of facts,

for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued: 22 of 1992.

Provided that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.

Explanation 1.— For the purposes of this sub-section, "instrument" means any scrip or authorisation or licence or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992, with respect to a reward or incentive scheme or duty exemption scheme or duty remission scheme or such other scheme bestowing financial or fiscal benefits, which may be utilised under the provisions of this Act or the rules made or notifications issued thereunder. 22 of 1992.

Explanation 2.—The provisions of this sub-section shall apply to any utilisation of instrument so obtained by the person referred to in this sub-section on or after the date on which the Finance Bill, 2012 receives the assent of the President, whether or not such instrument is issued to him prior to the date of the assent.

(2) Where the duty becomes recoverable in accordance with the provisions of sub-section (1), the person from whom such duty is to be recovered, shall, in addition to such duty, be liable to pay interest at the rate fixed by the Central Government under section 28AA and the amount of such interest shall be calculated for the period beginning from the date of utilisation of the instrument till the date of recovery of such duty.

(3) For the purposes of recovery under sub-section (2), the proper officer shall serve notice on the person to whom the instrument was issued requiring him to show cause, within a period of thirty days from the date of receipt of the notice, as to why the amount specified in the notice (excluding the interest) should not be recovered from him, and after giving that person an opportunity of being heard, and after considering

the representation, if any, made by such person, determine the amount of duty or interest or both to be recovered from such person, not being in excess of the amount specified in the notice, and pass order to recover the amount of duty or interest or both and the person to whom the instrument was issued shall repay the amount so specified in the notice within a period of thirty days from the date of receipt of the said order, along with the interest due on such amount, whether or not the amount of interest is specified separately.

(4) Where an order determining the duty has been passed under section 28, no order to recover that duty shall be passed under this section.

(5) Where the person referred to in sub-section (3) fails to repay the amount within the period of thirty days specified therein, it shall be recovered in the manner laid down in sub-section (1) of section 142.

123. In section 28BA of the Customs Act, in sub-section (1),—

Amendment
of section
28BA.

(a) for the words, figures and letter "or section 28B", the words, figures and letters "or section 28AAA or section 28B" shall be substituted;

(b) for the words, brackets, figures and letter "or sub-section (2) of section 28B", the words, brackets, figures and letters "or sub-section (3) of section 28AAA or sub-section (2) of section 28B" shall be substituted.

124. In section 47 of the Customs Act, in sub-section (2),—

Amendment
of section 47.

(a) in the first proviso, for the words "Provided that", the following shall be substituted, namely:—

"Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

Provided further that";

(b) in the second proviso, for the words "Provided further that", the words "Provided also that" shall be substituted.

125. In section 75A of the Customs Act, in sub-section (2), for the word, figures and letters "section 28AB", the word, figures and letters "section 28AA" shall be substituted and shall be deemed to have been substituted with effect from the 8th day of April, 2011:

Amendment
of section
75A.

126. In section 104 of the Customs Act, for sub-section (4), the following sub-sections shall be substituted, namely:—

Amendment
of section
104.

"(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence relating to—

2 of 1974.

(a) prohibited goods; or

(b) evasion or attempted evasion of duty exceeding fifty lakh rupees, shall be cognizable.

(5) Save as otherwise provided in sub-section (4), all other offences under the Act shall be non-cognizable.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under the Act shall be bailable."

2 of 1974.

Amendment
of section
122.

127. In section 122 of the Customs Act,—

(i) in clause (b), for the words "two lakh", the words "five lakh" shall be substituted;

(ii) in clause (c), for the words "ten thousand", the words "fifty thousand" shall be substituted.

Amendment
of section
153.

128. In section 153 of the Customs Act, in clause (a), for the words "registered post to the person for whom it is intended or to his agent", the words "registered post or by such courier as may be approved by the Commissioner of Customs" shall be substituted.

Special
provisions
exempting
additional
duty of
customs on
import of
foreign-going
vessels into
India.

129. Notwithstanding anything contained in sub-section (1) of section 25 of the Customs Act, the item and its description specified under column (1) of the Second Schedule, falling under Chapter 89 of the First Schedule to the Customs Tariff Act, 1975, shall be and shall be deemed to have been exempted from the whole of the additional duty of customs leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, on and from and up to the corresponding date specified in column (2) thereof.

51 of 1975.

Customs Tariff

Amendment
of section
8C.

130. In the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), in section 8C, in sub-section (5), for the proviso, the following proviso shall be substituted, namely:—

51 of 1975.

"Provided that if the Central Government is of the opinion that such article continues to be imported into India from the People's Republic of China so as to cause or threatening to cause market disruption to domestic industry, the Central Government may, notwithstanding the measures taken by the domestic industry towards adjustment to such market disruption or any threat arising thereof, if considers necessary that such duty should continue, extend the period of imposition of such safeguard duty for a period not beyond the period of ten years from the date on which the safeguard duty was first imposed."

Amendment
of First
Schedule.

131. The First Schedule to the Customs Tariff Act shall be amended in the manner specified in the Third Schedule.

Amendment
of Second
Schedule.

132. The Second Schedule to the Customs Tariff Act shall be amended in the manner specified in the Fourth Schedule.

Excise

Amendment
of section 4.

133. In the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act), in section 4, in sub-section (3), in clause (b), in the *Explanation*, for clause (i), the following clause shall be substituted, namely:—

1 of 1944.

'(i) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manners, namely:—

(A) if one owns or controls the other;

(B) where the undertakings are owned by firms, if such firms have one or more common partners;

(C) where the undertakings are owned by bodies corporate,—

(I) if one body corporate manages the other body corporate; or

(II) if one body corporate is a subsidiary of the other body corporate;

or

(III) if the bodies corporate are under the same management; or

(IV) if one body corporate exercises control over the other body corporate in any other manner;

(D) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm,—

(I) hold, directly or indirectly, not less than fifty per cent. of the shares, whether preference or equity, of the body corporate; or

(II) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate;

(E) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management;

(F) if the undertakings are owned or controlled by the same person or by the same group;

(G) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the foregoing sub-clauses.

Explanation I.— For the purposes of this clause, two bodies corporate shall be deemed to be under the same management,—

(i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or

(ii) if the managing director or manager of one such body corporate is the managing director or manager of the other; or

(iii) if one such body corporate holds not less than one-fourth of the equity shares in the other or controls the composition of not less than one-fourth of the total membership of the Board of directors of the other; or

(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with relatives of such directors or employees of the first mentioned body corporate) one-fourth of the directors of the other; or

(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in the other; or

(vi) if the same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares in one body corporate, also hold not less than one-fourth of the equity shares in the other; or

(vii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or

(viii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(ix) if the directors of one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II.— If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of, or controlled by, the group shall be deemed to be under the same management.

Explanation III.— If two or more bodies corporate under the same management hold, in the aggregate, not less than one-fourth equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

Explanation IV.— In determining whether or not two or more bodies corporate are under the same management, the shares held by financial institutions in such bodies corporate shall not be taken into account.

Illustration

Undertaking B is inter-connected with undertaking A and undertaking C is inter-connected with undertaking B. Undertaking C is inter-connected with undertaking A; if undertaking D is inter-connected with undertaking C, undertaking D will be inter-connected with undertaking B and consequently with undertaking A; and so on.

Explanation V.— For the purposes of this clause, "group" means a group of—

(i) two or more individuals, associations of individuals, firms, trusts, trustees or bodies corporate (excluding financial institutions), or any combination thereof, which exercises, or is established to be in a position to exercise, control, directly or indirectly, over any body corporate, firm or trust; or

(ii) associated persons.

Explanation VI.— For the purposes of this clause,—

(I) a group of persons who are able, directly or indirectly, to control the policy of a body corporate, firm or trust, without having a controlling interest in that body corporate, firm or trust, shall also be deemed to be in a position to exercise control over it;

(II) "associated persons"—

(a) in relation to a director of a body corporate, means—

(i) a relative of such director, and includes a firm in which such director or his relative is a partner;

(ii) any trust of which any such director or his relative is a trustee;

(iii) any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of directors;

(iv) any other body corporate, at any general meeting of which not less than one-fourth of the total number of directors of such other body corporate are appointed or controlled by the director of the first mentioned body corporate or his relative, whether acting singly or jointly;

(b) in relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm; and

(c) in relation to the trustee of a trust, means any other trustee of such trust;

(III) where any person is an associated person in relation to another, the latter shall also be deemed to be an associated person in relation to the former;.

134. In section 9 of the Central Excise Act, in sub-section (1), in clause (i), for the words "one lakh", the words "thirty lakhs" shall be substituted. Amendment of section 9.

135. In section 11A of the Central Excise Act,—

(a) in sub-section (5), for the words "has not been levied or paid or", the words "has not been levied or paid or has been" shall be substituted; Amendment of section 11A.

(b) for sub-section (8), the following sub-section shall be substituted, namely:—

"(8) Where the service of notice is stayed by an order of a court or tribunal, the period of such stay shall be excluded in computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4) or sub-section (5), as the case may be."

136. In section 11AC of the Central Excise Act, in sub-section (1),—

(i) in clauses (a) and (b), for the words "has not been levied or paid or", the words "has not been levied or paid or has been" shall respectively be substituted; Amendment of section 11AC.

(ii) in clause (c), for the words "duty so determined", the words "duty so determined only in a case where the penalty is paid within the period so specified" shall be substituted.

137. In section 12F of the Central Excise Act, for sub-section (2), the following sub-section shall be substituted, namely:—

2 of 1974.

"(2) The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Commissioner of Central Excise" were substituted."

Amendment of section 12F.

1 of 1944.

138. (1) The notifications of the Government of India in the Ministry of Finance (Department of Revenue) numbers G.S.R. 62 (E), dated the 6th February, 2010 and G.S.R. 163(E), dated the 17th March, 2012 (hereinafter referred to as the said notifications), issued under sub-section (1) of section 5A of the Central Excise Act, 1944, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Fifth Schedule, on and from the corresponding date specified in column (3) of that Schedule, against the said notifications specified in column (1) of that Schedule.

Amendment of notification issued under section 5A of Central Excise Act.

1 of 1944.

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the said notifications with retrospective effect as if the Central Government had the power to amend the said notifications under sub-section (1) of section 5A of the Central Excise Act, 1944, retrospectively, at all material times.

Explanation.— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had the said notification not been amended retrospectively.

1 of 1944.

58 of 1957.

139. (1) In the notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 254(E), dated the 16th March, 1995, issued under sub-section (1) of section 5A of the Central Excise Act, 1944 read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, in the TABLE, after S.No. 19 and the entries relating thereto, the following S.No. and the entries shall be and shall be deemed to be inserted retrospectively with effect from the 20th day of April, 2011, namely:—

Amendment of notification number G.S.R. 254(E) issued under section 5A of Central Excise Act.

(1)	(2)	(3)
"20.	All goods falling under heading 8607	If the goods are,— (i) manufactured by a factory belonging to the Central Government; and (ii) intended for use by any Department of the Central Government."

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the notification referred to in sub-section (1) with retrospective effect as if the Central Government had the power to amend the said notification under sub-section (1) of section 5A of the Central Excise Act, 1944 read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 retrospectively at all material times.

1 of 1944.

58 of 1957.

Amendment
of Third
Schedule.

140. The Third Schedule to the Central Excise Act shall be amended in the manner specified in the Sixth Schedule.

Central Excise Tariff

Amendment
of First
Schedule.

141. In the Central Excise Tariff Act, 1985 (hereinafter referred to as the Central Excise Tariff Act), the First Schedule shall be amended in the manner specified in the Seventh Schedule.

5 of 1986.

Amendment
of Chapter
Notes to
Chapter 54
of First
Schedule.

142. (1) In the First Schedule to the Central Excise Tariff Act, in Chapter 54, after Note 1, the following Note shall be inserted and shall be deemed to have been inserted with effect from the 29th day of June, 2010, namely:—

"1A. Notwithstanding anything contained in Note 1, man-made fibre such as polyester staple fibre and polyester filament yarn manufactured from plastic and plastic waste including waste polyethylene terephthalate bottles shall be classified as textile material under Chapter 54 or Chapter 55, as the case may be."

(2) Any action taken or anything done or purported to have been taken or done for recovery of duty of excise at any time during the period commencing on and from the 29th day of June, 2010 and ending with the date on which the Finance Bill, 2012 receives the assent of the President (hereafter in this section referred to as the "specified period"), shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times and, accordingly, notwithstanding any judgment, decree or order of any court, tribunal or other authority—

(a) all duties of excise levied, assessed or collected during the specified period on such goods shall be deemed to be and always to have been, as validly levied, assessed or collected as if the amendment made by sub-section (1) had been in force at all material times;

(b) recovery shall be made of all the duties which have not been paid, but would have been paid had the amendments made by sub-section (1) been in force, within a period of thirty days from the date on which the Finance Bill, 2012 receives the assent of the President and in the event of non-payment of such duties of excise within the said period, interest at the rate of twenty-four per cent. per annum on the amount of such duties in addition to the amount of duties to be recovered, shall be payable from the date immediately after the expiry of the said period of thirty days till the date of its payment;

(c) while computing the amount of duty to be recovered under clause (b), the assessee shall be entitled to take into account the CENVAT credit of duty paid on inputs, input services and capital goods, if any, under the CENVAT Credit Rules, 2004 which has not been availed by him for reason of such goods being treated as non-excisable or exempted goods.

Explanation.— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this section not come into force.

CHAPTER V

SERVICE TAX

143. In the Finance Act, 1994,—

Amendment
of Act 32 of
1994.

(A) in section 65, after the *Explanation* occurring at the end of clause (121), the following proviso shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

"Provided that the provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.";

(B) in section 65A, after sub-section (2), the following sub-section shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

"(3) The provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.";

(C) after section 65A, the following section shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

'65B. In this Chapter, unless the context otherwise requires,—

Interpreta-
tions.

4 of 1882.

(1) "actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882;

(2) "advertisement" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;

(3) "agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;

(4) "agricultural extension" means application of scientific research and knowledge to agricultural practices through farmer education or training;

(5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

(6) "Agricultural Produce Marketing Committee or Board" means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce;

22 of 1934.

(7) "aircraft" has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934;

55 of 1994.

(8) "airport" has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994;

(9) "amusement facility" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided;

(10) "Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962; 52 of 1962.

(11) "approved vocational education course" means,—

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or 52 of 1961.

(ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment; or

(iii) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India;

(12) "assessee" means a person liable to pay tax and includes his agent;

(13) "associated enterprise" shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961; 43 of 1961.

(14) "authorised dealer of foreign exchange" shall have the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999; 42 of 1999.

(15) "betting or gambling" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring;

(16) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963; 54 of 1963.

(17) "business entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;

(18) "Central Electricity Authority" means the authority constituted under section 3 of the Electricity (Supply) Act, 1948; 54 of 1948.

(19) "Central Transmission Utility" shall have the meaning assigned to it in clause (10) of section 2 of the Electricity Act, 2003; 36 of 2003.

(20) "courier agency" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;

(21) "customs station" shall have the meaning assigned to it in clause (13) of section 2 of the Customs Act, 1962; 52 of 1962.

(22) "declared service" means any activity carried out by a person for another person for consideration and declared as such under section 66E;

(23) "electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government; 36 of 2003.

(24) "entertainment event" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme;

(25) "goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(26) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

(27) "India" means,—

(a) the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

(28) "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment;

(29) "inland waterway" means national waterways as defined in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917;

(30) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;

(31) "local authority" means—

(a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;

(b) a Municipality as referred to in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

80 of 1976.

82 of 1985.

1 of 1917.

41 of 2006.

(e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;

(f) a development board constituted under article 371 of the Constitution; or

(g) a regional council constituted under article 371A of the Constitution;

(32) "metered cab" means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder; 59 of 1988.

(33) "money" means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any similar instrument but shall not include any currency that is held for its numismatic value;

(34) "negative list" means the services which are listed in section 66D;

(35) "non-taxable territory" means the territory which is outside the taxable territory;

(36) "notification" means notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;

(37) "person" includes,—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a society,

(v) a limited liability partnership,

(vi) a firm,

(vii) an association of persons or body of individuals, whether incorporated or not,

(viii) Government,

(ix) a local authority, or

(x) every artificial juridical person, not falling within any of the preceding sub-clauses;

(38) "port" has the meaning assigned to it in clause (g) of section 2 of the Major Port Trusts Act, 1963 or in clause (4) of section 3 of the Indian Ports Act, 1908; 38 of 1963.
15 of 1908.

(39) "prescribed" means prescribed by rules made under this Chapter;

(40) "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force; 1 of 1944.

(41) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;

2 of 1934.

(42) "Reserve Bank of India" means the bank established under section 3 of the Reserve Bank of India Act, 1934;

42 of 1956.

(43) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956;

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.—For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation 3.— For the purposes of this Chapter,—

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.— A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

(45) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005; 28 of 2005.

(46) "stage carriage" shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988; 59 of 1988.

(47) "State Electricity Board" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948; 54 of 1948.

(48) "State Transmission Utility" shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003; 36 of 2003.

(49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;

(50) "tax" means service tax leviable under the provisions of this Chapter;

(51) "taxable service" means any service on which service tax is leviable under section 66B;

(52) "taxable territory" means the territory to which the provisions of this Chapter apply;

(53) "vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963; 38 of 1963.

(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise. 1 of 1944.

(D) in section 66, the following proviso shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

"Provided that the provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.";

(E) in section 66A, after *Explanation 2* occurring at the end of sub-section (2), the following sub-section shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

"(3) The provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.";

(F) after section 66A, the following sections shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

66B. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Charge of service tax on and after Finance Act, 2012.

66C. (1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

Determination of place of provision of service.

(2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

66D. The negative list shall comprise of the following services, namely:—

Negative list of services.

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

- (e) trading of goods;
- (f) any process amounting to manufacture or production of goods;
- (g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery;
- (j) admission to entertainment events or access to amusement facilities;
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- (l) services by way of—
 - (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
 - (iii) education as a part of an approved vocational education course;
- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of—
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - (ii) *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers, with or without accompanied belongings, by—
 - (i) a stage carriage;
 - (ii) railways in a class other than—
 - (A) first class; or
 - (B) an airconditioned coach;
 - (iii) metro, monorail or tramway;
 - (iv) inland waterways;
 - (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
 - (vi) metered cabs, radio taxis or auto rickshaws;
- (p) services by way of transportation of goods—
 - (i) by road except the services of—
 - (A) a goods transportation agency; or
 - (B) a courier agency;

(ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or

(iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

66E. The following shall constitute declared services, namely:—

Declared
services.

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority.

Explanation.— For the purposes of this clause,—

(I) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;

(g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;

(h) service portion in the execution of a works contract;

(i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

66F. (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.

Principles of
interpreta-
tion of
specified
descriptions
of services or
bundled
services.

(2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely:—

(a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation.—For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.;

(G) in section 67, in the *Explanation*, clause (b) shall be omitted, with effect from such date as the Central Government may, by notification, appoint;

(H) after section 67, the following section shall be inserted, namely:—

'67A. The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

Explanation.—For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the *Explanation* to section 14 of the Customs Act, 1962.;

52 of 1962.

(I) in section 68, in sub-section (2), with effect from such date as the Central Government may, by notification, appoint,—

(i) for the words "any taxable service notified", the words "such taxable services as may be notified" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.";

(J) after section 72, the following section shall be inserted, namely:—

'72A. (1) If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person"),—

(i) has failed to declare or determine the value of a taxable service correctly; or

(ii) has availed and utilised credit of duty or tax paid—

(a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or

(b) by means of fraud, collusion, or any wilful misstatement or suppression of facts; or

(iii) has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts

Date of determination of rate of tax, value of taxable service and rate of exchange.

Special audit.

from the registered premises falling under the jurisdiction of the said Commissioner,

he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

(2) The chartered accountant or cost accountant referred to in sub-section (1) shall, within the period specified by the said Commissioner, submit a report duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified by him.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force.

(4) The person liable to pay tax shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilised in any proceeding under the provisions of this Chapter or rules made thereunder.

Explanation.— For the purposes of this section,—

(i) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;

(ii) "cost accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;

(K) in section 73,—

(i) for the words "one year", wherever they occur, the words "eighteen months" shall be substituted;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Notwithstanding anything contained in sub-section (1) (except the period of eighteen months of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.";

(iii) in sub-section (4A), for the words, brackets and figures "sub-sections (3) and (4)", the word, brackets and figure "sub-section (4)" shall be substituted;

(L) section 80 shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Notwithstanding anything contained in the provisions of section 76 or section 77 or section 78, no penalty shall be imposable for failure to pay service tax payable, as on the 6th day of March, 2012, on the taxable service referred to in sub-clause (====) of clause (105) of section 65, subject to the condition that the amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.";

38 of 1949.

23 of 1959.

(M) in section 83, for the figures and letters "12E, 14, 14AA, 15, 33A, 34A, 35F", the figures, letters, words and brackets "12E, 14, 15, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F" shall be substituted;

(N) in section 85,—

(i) in sub-section (3), after the words "under this Chapter", the words and figures ", made before the date on which the Finance Bill, 2012 receives the assent of the President" shall be inserted;

(ii) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.";

(O) in section 86,—

(i) in sub-section (1), after the words "against such order", the words "within three months of the date of receipt of the order" shall be inserted;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every appeal under sub-section (2) or sub-section (2A) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners or, as the case may be, the Committee of Commissioners.";

(P) in section 88, for the word "duty", the word "tax" shall be substituted;

(Q) in section 89, in sub-section (1), for clause (a), the following clause shall be substituted with effect from the date on which the Finance Bill, 2012 receives the assent of the President, namely:—

"(a) knowingly evades the payment of service tax under this Chapter; or";

(R) in section 93A, for the words "of such goods", the words "or removal or export of such goods" shall be substituted;

(S) after section 93A, the following section shall be inserted, namely:—

"93B. All rules made under section 94 and applicable to the taxable services shall also be applicable to any other service in so far as they are relevant to the determination of any tax liability, refund, credit of service tax or duties paid on inputs and input services or for carrying out the provisions of Chapter V of the Finance Act, 1994.";

(T) in section 94, in sub-section (2),—

(i) clause (ee) shall be omitted;

(ii) in clause (hhh), after the words "provision of taxable service", the words, figures and letter "under section 66C" shall be inserted;

Insertion of
new section
93B.

Rules made
under section
94 to be
applicable to
services other
than taxable
services.

(iii) clause (i) shall be re-lettered as clause (k) thereof and before the clause (k) as so re-lettered, the following shall be inserted, namely:—

"(i) provide for the amount to be paid for compounding and the manner of compounding of offences;

(j) provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in Chapter V of the Central Excise Act, 1944 as made applicable to service tax vide section 83;"

(U) in section 95, after sub-section (IH), the following sub-section shall be inserted, namely:—

"(I-I) If any difficulty arises in giving effect to section 143 of the Finance Act, 2012, in so far as it relates to insertion of sections 65B, 66B, 66C, 66D, 66E and section 66F in Chapter V of the Finance Act, 1994, the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, make such provisions, as may be necessary or expedient for the purpose of removing the difficulty from such date, which shall include the power to give retrospective effect from a date not earlier than the date of coming into force of the Finance Act, 2012:

Provided that no such order shall be made after the expiry of a period of two years from the date of coming into force of these provisions.";

(V) in section 96C, in sub-section (2), for clause (e), the following clause shall be substituted, namely:—

"(e) admissibility of credit of duty or tax in terms of the rules made in this regard;"

(W) after section 96J, the following sections shall be inserted, namely:—

"97. (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of roads, during the period on and from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive).

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.

98. (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of non-commercial Government buildings, during the period on and from the 16th day of June, 2005 till the date on which section 66B comes into force.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President."

Insertion of new sections 97 and 98. Special provision for exemption in certain cases relating to management, etc., of roads.

Special provision for exemption in certain cases relating to management, etc., of non-commercial Government buildings.

1 of 1944.

32 of 1994.

Amendment
of rule 6 of
CENVAT
Credit Rules,
2004.

144. (1) In the CENVAT Credit Rules, 2004, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944, sub-rule (6A) of rule 6 as inserted by clause (ix) of rule 5 of the CENVAT Credit (Amendment) Rules, 2011, published in the Official Gazette *vide* notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 134(E), dated the 1st March, 2011 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Eighth Schedule, on and from the date specified in column (3) of that Schedule, against the rule specified in column (1) of that Schedule. 1 of 1944.

(2) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, on and from the 10th day of February, 2006, relating to the provisions as amended by sub-section (1), shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendments made by sub-section (1) had been in force at all material times.

(3) For the purpose of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, 1944, retrospectively, at all material times. 1 of 1944.

Validation of
exemption
given to club
or association
including
cooperative
societies in
relation to
project.

145. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 566 (E), dated the 25th July, 2011, issued in exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, granting exemption from the whole of service tax leviable under section 66 thereof, on the club or association service referred to in sub-clause (zzze) of clause (105) of section 65 of the said Act, provided by a club or an association including registered cooperative societies, in relation to the project, shall be deemed to have, and deemed always to have, for all purposes, validly come into force on and from the 16th day of June, 2005, at all material times. 32 of 1994.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected as if the notification referred to in sub-section (1) had been in force at all material times.

(3) Notwithstanding anything contained in the Finance Act, 1994, an application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2012 receives the assent of the President. 32 of 1994.

Explanation.—For the removal of doubts, it is hereby declared that,—

(i) project means common facility set-up for treatment and recycling of effluents and solid wastes, with financial assistance from the Central Government or a State Government;

(ii) the provisions of section 11B of the Central Excise Act, 1944, shall be applicable in case of refunds under this section. 1 of 1944.

CHAPTER VI

AMENDMENTS TO THE FISCAL RESPONSIBILITY AND BUDGET MANAGEMENT ACT, 2003

Amendment
of section 2.

146. In section 2 of the Fiscal Responsibility and Budget Management Act, 2003 (hereinafter referred to as the Fiscal Responsibility Act),— 39 of 2003.

(i) after clause (a), the following clause shall be inserted, namely:—

'(aa) "effective revenue deficit" means the difference between the revenue deficit and grants for creation of capital assets;'

(ii) after clause (b), the following clause shall be inserted, namely:—

"(bb) "grants for creation of capital assets" means the grants in aid given by the Central Government to the State Governments, constitutional authorities or bodies, autonomous bodies, local bodies and other scheme implementing agencies for creation of capital assets which are owned by the said entities;"

147. In section 3 of the Fiscal Responsibility Act,—

Amendment
of section 3.

(a) in sub-section (1),—

(i) in the opening portion, for the words "demands for grants", the words "demands for grants except the Medium-term Expenditure Framework Statement" shall be substituted;

(ii) after clause (c), the following clause shall be inserted, namely:—

"(d) the Medium-term Expenditure Framework Statement";

(b) after sub-section (1), the following sub-sections shall be inserted, namely:—

"(1A) The statements referred to in clauses (a) to (c) of sub-section (1) shall be followed up with the Medium-term Expenditure Framework Statement with detailed analysis of underlying assumptions.

(1B) The Central Government shall lay the Medium-term Expenditure Framework Statement referred to in clause (d) of sub-section (1) before both Houses of Parliament, immediately following the Session of Parliament in which the policy statements referred to in clauses (a) to (c) were laid under sub-section (1).";

(c) after sub-section (6), the following sub-section shall be inserted, namely:—

"(6A) (a) The Medium-term Expenditure Framework Statement shall set forth a three-year rolling target for prescribed expenditure indicators with specification of underlying assumptions and risk involved.

(b) In particular and without prejudice to the provisions contained in clause (a), the Medium-term Expenditure Framework Statement shall, *inter alia*, contain—

(i) the expenditure commitment of major policy changes involving new service, new instruments of service, new schemes and programmes;

(ii) the explicit contingent liabilities, which are in the form of stipulated annuity payments over a multi-year time-frame;

(iii) the detailed breakup of grants for creation of capital assets.";

(d) in sub-section (7), for the words "the Fiscal Policy Strategy Statement", the words "the Fiscal Policy Strategy Statement, the Medium-term Expenditure Framework Statement" shall be substituted.

148. In section 4 of the Fiscal Responsibility Act,—

Amendment
of section 4.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Central Government shall take appropriate measures to reduce the fiscal deficit, revenue deficit and effective revenue deficit to eliminate the effective revenue deficit by the 31st March, 2015 and thereafter build up adequate effective revenue surplus and also to reach revenue deficit of not more than two per cent. of Gross Domestic Product by the 31st March, 2015 and thereafter as may be prescribed by rules made by the Central Government.";

(b) in sub-section (2),—

(i) in clause (a),—

(A) for the words "fiscal deficit and revenue deficit", the words "fiscal deficit, revenue deficit and effective revenue deficit" shall be substituted;

(B) for the words, figures and letters "the 31st March, 2009", the words, figures and letters "the 31st March, 2015" shall be substituted;

(ii) in the first proviso, after the words "the revenue deficit", the words " , effective revenue deficit" shall be inserted.

Insertion of
new section
7A.

Laying of
review
reports.

Amendment
of section 8.

149. After section 7 of the Fiscal Responsibility Act, the following section shall be inserted, namely:—

"7A. The Central Government may entrust the Comptroller and Auditor-General of India to review periodically as required, the compliance of the provisions of this Act and such reviews shall be laid on the table of both Houses of Parliament."

150. In section 8 of the Fiscal Responsibility Act, in sub-section (2),—

(i) after clause (b), the following clause shall be inserted, namely:—

"(ba) the expenditure indicators with specifications of underlying assumptions and risk involved under clause (a) of sub-section (6A) of section 3;"

(ii) in clause (c), for the words "Fiscal Policy Strategy Statement", the words "Fiscal Policy Strategy Statement, Medium-term Expenditure Framework Statement" shall be substituted;

(iii) after clause (c), the following clause shall be inserted, namely:—

"(ca) the per cent. of revenue deficit to be specified after the 31st March, 2015 under sub-section (1) of section 4;"

CHAPTER VII

MISCELLANEOUS

Amendment
of Schedule
to Act 47 of
1974.

151. In the Oil Industry (Development) Act, 1974, in the Schedule, against Sl. No.1 relating to crude oil, for the entry in column 3, the entry "Rupees four thousand five hundred per tonne" shall be substituted.

Amendment
of Seventh
Schedule to
Act 14 of
2001.
Amendment
of Act 23 of
2004.

152. The Seventh Schedule to the Finance Act, 2001 (as substituted by the Twelfth Schedule to the Finance Act, 2005) shall be amended in the manner specified in the Ninth Schedule. 18 of 2005.

153. In the Finance (No. 2) Act, 2004, with effect from the 1st day of July, 2012,—

(a) in section 97,—

(i) after clause (5), the following clauses shall be inserted, namely:—

'(5A) "initial public offer" has the meaning assigned to it in clause (p) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 made under the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(5B) "lead merchant banker" means a merchant banker appointed as lead merchant banker in accordance with sub-regulation (1) of regulation 5 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 made under the Securities and Exchange Board of India Act, 1992;"

15 of 1992.

(ii) in clause (13), after sub-clause (a), the following sub-clause shall be inserted, namely:—

"(aa) sale of unlisted equity shares by any holder of such shares under an offer for sale to the public included in an initial public offer and where such shares are subsequently listed on a recognised stock exchange; or";

(b) in section 98, in the Table,—

(i) against Sl. No. 1 under column (3) relating to rate, for the figures and words "0.125 per cent.", the figures and words "0.1 per cent." shall be substituted;

(ii) against Sl. No. 2, under column (3) relating to rate, for the figures and words "0.125 per cent.", the figures and words "0.1 per cent." shall be substituted;

(iii) after Sl. No. 5, and the entries relating thereto, the following Sl. No. entries shall be inserted, namely:—

1	2	3	4
"6.	Sale of unlisted equity shares under an offer for Sale referred to in sub-clause (aa) of clause (13) of section 97.	0.2 per cent.	Seller";

(c) in section 100,—

(i) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) The lead merchant banker appointed by the company in respect of an initial public offer shall collect the securities transaction tax from every person who enters into a taxable securities transaction referred to in sub-clause (aa) of clause (13) of section 97 at the rate specified in section 98.";

(ii) in sub-section (3),—

(A) after the words, brackets and figure "sub-section (2)", the words, brackets, figure and letter "or sub-section (2A)" shall be inserted;

(B) after the words "Mutual Fund", the words "or the lead merchant banker in the case of an initial public offer" shall be inserted;

(iii) in sub-section (4), after the words, "Mutual Fund", the words "or the lead merchant banker in the case of an initial public offer" shall be inserted;

(d) in section 101, after the words "in the case of every Mutual Fund", the words "or the lead merchant banker in the case of an initial public offer" shall be inserted.

154. The Seventh Schedule to the Finance Act, 2005 shall be amended in the manner specified in the Tenth Schedule.

Amendment
of Seventh
Schedule to
Act 18 of
2005.

155. In section 73 of the Finance Act, 2010, in sub-section (2), for the word "inputs", the words "inputs or input services" shall be substituted and shall be deemed to have been substituted with effect from the 8th day of May, 2010.

Amendment
of Act 14 of
2010.

Amendment
of Act 8 of
2011.

156. In the Finance Act, 2011, with effect from the date of coming into force of that Act,—

(i) in section 73,—

(A) in the opening portion, for the brackets, words and letter "(hereinafter referred to as the Central Excise Tariff Act),—

(a) the First Schedule shall",

the words ", the First Schedule shall" shall be substituted and shall be deemed to have been substituted;

(B) the brackets, letter and words "(b) the Third Schedule shall be amended in the manner specified in the Twelfth Schedule" shall be inserted and shall be deemed to have been inserted under the heading "Excise" as section 70A of the aforesaid Act.

(ii) in the Twelfth Schedule, for the brackets, words, figures and letter

"[See section 73(b)]

In the Third Schedule to the Central Excise Tariff Act",

the following shall be substituted and shall be deemed to have been substituted, namely:—

"[See section 70A]

In the Third Schedule to the Central Excise Act".

THE FIRST SCHEDULE

(See section 2)

PART I

INCOME-TAX.

Paragraph A

(I) In the case of every individual other than the individual referred to in items (II), (III) and (IV) of this Paragraph or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- | | |
|--|---|
| (1) where the total income does not exceed Rs. 1,80,000 | <i>Nil</i> ; |
| (2) where the total income exceeds Rs. 1,80,000 but does not exceed Rs. 5,00,000 | 10 per cent. of the amount by which the total income exceeds Rs. 1,80,000; |
| (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000 | Rs. 32,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (4) where the total income exceeds Rs. 8,00,000 | Rs. 92,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 8,00,000. |

(II) In the case of every individual, being a woman resident in India, and below the age of sixty years at any time during the previous year,—

Rates of income-tax

- | | |
|--|---|
| (1) where the total income does not exceed Rs. 1,90,000 | <i>Nil</i> ; |
| (2) where the total income exceeds Rs. 1,90,000 but does not exceed Rs. 5,00,000 | 10 per cent. of the amount by which the total income exceeds Rs. 1,90,000; |
| (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000 | Rs. 31,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (4) where the total income exceeds Rs. 8,00,000 | Rs. 91,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 8,00,000. |

(III) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Rates of income-tax

- | | |
|--|---|
| (1) where the total income does not exceed Rs. 2,50,000 | <i>Nil</i> ; |
| (2) where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000 | 10 per cent. of the amount by which the total income exceeds Rs. 2,50,000; |
| (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000 | Rs. 25,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (4) where the total income exceeds Rs. 8,00,000 | Rs. 85,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 8,00,000. |

(IV) In the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year,—

Rates of income-tax

- | | |
|--|---|
| (1) where the total income does not exceed Rs. 5,00,000 | <i>Nil</i> ; |
| (2) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000 | 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (3) where the total income exceeds Rs. 8,00,000 | Rs. 60,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 8,00,000. |

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

- | | |
|---|--|
| (1) where the total income does not exceed Rs.10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs.10,000 but does not exceed Rs. 20,000 | Rs.1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs.10,000; |
| (3) where the total income exceeds Rs. 20,000 | Rs. 3,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 20,000. |

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income	30 per cent.
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Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income	30 per cent.
----------------------------------	--------------

Paragraph E

In the case of a company,—

Rates of income-tax

- | | |
|---|-----------------------------------|
| I. In the case of a domestic company | 30 per cent. of the total income; |
| II. In the case of a company other than a domestic company— | |

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government

(ii) on the balance, if any, of the total income	50 per cent.;
	40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated,—

(i) in the case of every domestic company having a total income exceeding one crore rupees, at the rate of five per cent. of such income-tax;

(ii) in the case of every company other than a domestic company having a total income exceeding one crore rupees, at the rate of two per cent. of such income-tax:

Provided that in the case of every company having a total income exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

PART II

RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES

In every case in which under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, tax is to be deducted at the rates in force, deduction shall be made from the income subject to the deduction at the following rates:—

	Rate of income-tax
1. In the case of a person other than a company—	
(a) where the person is resident in India—	
(i) on income by way of interest other than "Interest on securities"	10 per cent.;
(ii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent.;
(iii) on income by way of winnings from horse races	30 per cent.;
(iv) on income by way of insurance commission	10 per cent.;
(v) on income by way of interest payable on—	10 per cent.;
(A) any debentures or securities for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;	
(B) any debentures issued by a company where such debentures are listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder;	
(C) any security of the Central or State Government;	
(vi) on any other income	10 per cent.;
(b) where the person is not resident in India—	
(i) in the case of a non-resident Indian—	
(A) on any investment income	20 per cent.;
(B) on income by way of long-term capital gains referred to in section 115E or sub-clause (iii) of clause (c) of sub-section (1) of section 112	10 per cent.;
(C) on income by way of short-term capital gains referred to in section 111A	15 per cent.;
(D) on other income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10]	20 per cent.;
(E) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in section 194LB or section 194LC)	20 per cent.;
(F) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India—	

Rate of income-tax

- (I) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005 20 per cent.;
- (II) where the agreement is made on or after the 1st day of June, 2005 10 per cent.;
- (G) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(i)(F)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—
- (I) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005 20 per cent.;
- (II) where the agreement is made on or after the 1st day of June, 2005 10 per cent.;
- (H) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—
- (I) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005 20 per cent.;
- (II) where the agreement is made on or after the 1st day of June, 2005 10 per cent.;
- (I) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent.;
- (J) on income by way of winnings from horse races 30 per cent.;
- (K) on the whole of the other income 30 per cent.;
- (ii) in the case of any other person—
- (A) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in section 194LB or section 194LC) 20 per cent.;
- (B) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India—
- (I) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005 20 per cent.;
- (II) where the agreement is made on or after the 1st day of June, 2005 10 per cent.;

Rate of income-tax

(C) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(ii)(B)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(I) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005 20 per cent.;

(II) where the agreement is made on or after the 1st day of June, 2005 10 per cent.;

(D) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(I) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005 20 per cent.;

(II) where the agreement is made on or after the 1st day of June, 2005 10 per cent.;

(E) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent.;

(F) on income by way of winnings from horse races 30 per cent.;

(G) on income by way of short-term capital gains referred to in section 111A 15 per cent.;

(H) on income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-section (1) of section 112 10 per cent.;

(I) on other income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10] 20 per cent.;

(J) on the whole of the other income 30 per cent.

2. In the case of a company—

(a) where the company is a domestic company—

(i) on income by way of interest other than "Interest on securities" 10 per cent.;

(ii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent.;

(iii) on income by way of winnings from horse races 30 per cent.;

(iv) on any other income 10 per cent.;

(b) where the company is not a domestic company—

(i) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent.;

(ii) on income by way of winnings from horse races 30 per cent.;

(iii) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in section 194LB or section 194LC) 20 per cent.;

(iv) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976 where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India—

(A) where the agreement is made before the 1st day of June, 1997 30 per cent.;

(B) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005 20 per cent.;

(C) where the agreement is made on or after the 1st day of June, 2005 10 per cent.;

(v) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(iv)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976 50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997 30 per cent.;

(C) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005 20 per cent.;

(D) where the agreement is made on or after the 1st day of June, 2005 10 per cent.;

(vi) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976 50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997 30 per cent.;

(C) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005 20 per cent.;

(D) where the agreement is made on or after the 1st day of June, 2005 10 per cent.;

(vii) on income by way of short-term capital gains referred to in section 111A 15 per cent.;

(viii) on income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-section (1) of section 112 10 per cent.;

(ix) on other income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10] 20 per cent.;

(x) on any other income 40 per cent.

Explanation.—For the purpose of item 1(b)(i) of this Part, “investment income” and “non-resident Indian” shall have the meanings respectively assigned to them in Chapter XII-A of the Income-tax Act.

Surcharge on income-tax

The amount of income-tax deducted in accordance with the provisions of item 2(b) of this Part, shall be increased by a surcharge, for purposes of the Union, in the case of every company other than a domestic company, calculated at the rate of two per cent. of such income-tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees.

PART III

RATES FOR CHARGING INCOME-TAX IN CERTAIN CASES, DEDUCTING INCOME-TAX FROM INCOME CHARGEABLE UNDER THE HEAD "SALARIES" AND COMPUTING "ADVANCE TAX"

In cases in which income-tax has to be charged under sub-section (4) of section 172 of the Income-tax Act or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or deducted from, or paid on, from income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" [not being "advance tax" in respect of any income chargeable to tax under Chapter XII or Chapter XII-A or income chargeable to tax under section 115JB or section 115JC or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act at the rates as specified in that Chapter or section or surcharge, wherever applicable, on such "advance tax" in respect of any income chargeable to tax under section 115A or section 115AB or section 115AC or section 115ACA or section 115AD or section 115B or section 115BB or section 115BBA or section 115BBC or section 115BBD or section 115BBE or section 115E or section 115JB or section 115JC] shall be charged, deducted or computed at the following rate or rates:—

Paragraph A

(I) In the case of every individual other than the individual referred to in items (II) and (III) of this Paragraph or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- | | |
|---|--|
| (1) where the total income does not exceed Rs. 2,00,000 | <i>Nil;</i> |
| (2) where the total income exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000 | 10 per cent. of the amount by which the total income exceeds Rs. 2,00,000; |
| (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 | Rs. 30,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (4) where the total income exceeds Rs. 10,00,000 | Rs. 1,30,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000. |

(II) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Rates of income-tax

- | | |
|---|--|
| (1) where the total income does not exceed Rs. 2,50,000 | <i>Nil;</i> |
| (2) where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000 | 10 per cent. of the amount by which the total income exceeds Rs. 2,50,000; |
| (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 | Rs. 25,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (4) where the total income exceeds Rs. 10,00,000 | Rs. 1,25,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000. |

(III) In the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year, —

Rates of income-tax

- | | |
|--|---|
| (1) where the total income does not exceed Rs.5,00,000 | Nil; |
| (2) where the total income exceeds Rs.5,00,000 but does not exceed Rs. 10,00,000 | 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (3) where the total income exceeds Rs. 10,00,000 | Rs. 1,00,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000. |

Paragraph B

In the case of every co-operative society, —

Rates of income-tax

- | | |
|---|---|
| (1) where the total income does not exceed Rs.10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs.10,000 but does not exceed Rs. 20,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |
| (3) where the total income exceeds Rs. 20,000 | Rs. 3,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 20,000. |

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income 30 per cent.

Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income 30 per cent.

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company 30 per cent. of the total income;

II. In the case of a company other than a domestic company—

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government

50 per cent.;

(ii) on the balance, if any, of the total income

40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated,—

(i) in the case of every domestic company having a total income exceeding one crore rupees, at the rate of five per cent. of such income-tax;

(ii) in the case of every company other than a domestic company having a total income exceeding one crore rupees, at the rate of two per cent. of such income-tax:

Provided that in the case of every company having a total income exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

PART IV

[See section 2(13)(c)]

RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME

Rule 1.—Agricultural income of the nature referred to in sub-clause (a) of clause (1A) of section 2 of the Income-tax Act shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from other sources" and the provisions of sections 57 to 59 of that Act shall, so far as may be, apply accordingly:

Provided that sub-section (2) of section 58 shall apply subject to the modification that the reference to section 40A therein shall be construed as not including a reference to sub-sections (3) and (4) of section 40A.

Rule 2.—Agricultural income of the nature referred to in sub-clause (b) or sub-clause (c) of clause (1A) of section 2 of the Income-tax Act [other than income derived from any building required as a dwelling-house by the receiver of the rent or revenue of the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c)] shall be computed as if it were income chargeable to income-tax under that Act under the head "Profits and gains of business or profession" and the provisions of sections 30, 31, 32, 36, 37, 38, 40, 40A [other than sub-sections (3) and (4) thereof], 41, 43, 43A, 43B and 43C of the Income-tax Act shall, so far as may be, apply accordingly.

Rule 3.—Agricultural income of the nature referred to in sub-clause (c) of clause (1A) of section 2 of the Income-tax Act, being income derived from any building required as a dwelling-house by the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c) shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from house property" and the provisions of sections 23 to 27 of that Act shall, so far as may be, apply accordingly.

Rule 4.—Notwithstanding anything contained in any other provisions of these rules, in a case—

(a) where the assessee derives income from sale of tea grown and manufactured by him in India, such income shall be computed in accordance with rule 8 of the Income-tax Rules, 1962, and sixty per cent. of such income shall be regarded as the agricultural income of the assessee;

(b) where the assessee derives income from sale of centrifuged latex or cenex or latex based crepes (such as pale latex crepe) or brown crepes (such as estate brown crepe, re-milled crepe, smoked blanket crepe or flat bark crepe) or technically specified block rubbers manufactured or processed by him from rubber plants grown by him in India, such income shall be computed in accordance with rule 7A of the Income-tax Rules, 1962, and sixty-five per cent. of such income shall be regarded as the agricultural income of the assessee;

(c) where the assessee derives income from sale of coffee grown and manufactured by him in India, such income shall be computed in accordance with rule 7B of the Income-tax Rules, 1962, and sixty per cent. or seventy-five per cent., as the case may be, of such income shall be regarded as the agricultural income of the assessee.

Rule 5.—Where the assessee is a member of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) which in the previous year has either no income chargeable to tax under the Income-tax Act or has total income not exceeding the maximum amount not chargeable to tax in the case of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) but has any agricultural income then, the agricultural income or loss of the association or body shall be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed shall be regarded as the agricultural income or loss of the assessee.

Rule 6.—Where the result of the computation for the previous year in respect of any source of agricultural income is a loss, such loss shall be set off against the income of the assessee, if any, for that previous year from any other source of agricultural income:

Provided that where the assessee is a member of an association of persons or a body of individuals and the share of the assessee in the agricultural income of the association or body, as the case may be, is a loss, such loss shall not be set off against any income of the assessee from any other source of agricultural income.

Rule 7.—Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

Rule 8.—(1) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2012, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 2004 or the 1st day of April, 2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011, is a loss, then, for the purposes of sub-section (2) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2004, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2005, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2006, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2007, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2008, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2009, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2010 or the 1st day of April, 2011,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2010, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2011,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2011,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2012.

(2) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2013, or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012, is a loss, then, for the purposes of sub-section (10) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2005, to the extent, if any, such loss has not been set off against the agricultural income for the previous year

relevant to the assessment year commencing on the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2006, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2007, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2008, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2009, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2010, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2011 or the 1st day of April, 2012,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2011, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2012,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2012,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2013.

(3) Where any person deriving any agricultural income from any source has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in sub-rule (1) or sub-rule (2) shall entitle any person, other than the person incurring the loss, to have it set off under sub-rule (1) or, as the case may be, sub-rule (2).

(4) Notwithstanding anything contained in this rule, no loss which has not been determined by the Assessing Officer under the provisions of these rules or the rules contained in the First Schedule to the Finance (No. 2) Act, 2004 (23 of 2004) or of the First Schedule to the Finance Act, 2005 (18 of 2005), or of the First Schedule to the Finance Act, 2006 (21 of 2006) or of the First Schedule to the Finance Act, 2007 (22 of 2007) or of the First Schedule to the Finance Act, 2008 (18 of 2008) or of the First Schedule to the Finance (No. 2) Act, 2009 (33 of 2009) or of the First Schedule to the Finance Act, 2010 (14 of 2010) or of the First Schedule to the Finance Act, 2011 (8 of 2011) shall be set off under sub-rule (1) or, as the case may be, sub-rule (2).

Rule 9.—Where the net result of the computation made in accordance with these rules is a loss, the loss so computed shall be ignored and the net agricultural income shall be deemed to be *nil*.

Rule 10.—The provisions of the Income-tax Act relating to procedure for assessment (including the provisions of section 288A relating to rounding off of income) shall, with the necessary modifications, apply in relation to the computation of the net agricultural income of the assessee as they apply in relation to the assessment of the total income.

Rule 11.—For the purposes of computing the net agricultural income of the assessee, the Assessing Officer shall have the same powers as he has under the Income-tax Act for the purposes of assessment of the total income.

THE SECOND SCHEDULE

(See section 129)

Description of item and its exemption	Period of effect
(1)	(2)
Foreign-going vessels	1st March, 2011 to 16th March, 2012.

Explanation.—For the purpose of this exemption, "foreign-going vessels" shall have the meaning assigned to it under clause (21) of section 2 of the Customs Act.

THE THIRD SCHEDULE
(See section 131)

In the First Schedule to the Customs Tariff Act,—

(1) in Chapter 24, in the entry in column (2) occurring against the tariff items 2402 20 10, 2402 20 20, 2402 20 30 and 2402 20 40, for the figures and word "60 millimetres", the figures and word "65 millimetres" shall be substituted;

(2) in Chapter 26, in heading 2601, in sub-heading 2601 11, for tariff items 2601 11 10 to 2601 11 90 and the entries relating thereto, the following tariff items and entries shall be substituted, namely:—

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Area
(1)	(2)	(3)	(4)	(5)
	--- Iron ore lumps (60% Fe or more)			
2601 11 11	---- 60% Fe or more but below 62% Fe	kg.	10%	-
2601 11 12	---- 62% Fe or more but below 65% Fe	kg.	10%	-
2601 11 19	---- 65% Fe and above	kg.	10%	-
	--- Iron ore lumps (below 60% Fe, including black iron ore containing up to 10% Mn)			
2601 11 21	---- below 55% Fe	kg.	10%	-
2601 11 22	---- 55% Fe or more but below 58% Fe	kg.	10%	-
2601 11 29	---- 58% Fe or more but below 60% Fe	kg.	10%	-
	--- Iron ore fines (62% Fe or more)			
2601 11 31	---- 62% Fe or more but below 65% Fe	kg.	10%	-
2601 11 39	---- 65% Fe and above	kg.	10%	-
	--- Iron ore Fines (below 62% Fe)			
2601 11 41	---- below 55% Fe	kg.	10%	-
2601 11 42	---- 55% Fe or more but below 58% Fe	kg.	10%	-
2601 11 43	---- 58% Fe or more but below 60% Fe	kg.	10%	-
2601 11 49	---- 60% Fe or more but below 62% Fe	kg.	10%	-
2601 11 50	--- Iron ore concentrates	kg.	10%	-
2601 11 90	--- Others	kg.	10%	-

(3) in Chapter 48, after Note 12, the following Note shall be inserted, namely:—

"13. Notwithstanding anything contained in Note 12, if paper and paper products of heading 4811, 4816 or 4820 are printed with any character, name, logo, motif or format, they shall remain classified under the respective headings as long as such products are intended to be used for further printing or writing.";

(4) in Chapter 74, in heading 7404,—

(a) in tariff item 7404 00 12, in the entry in column (2), for the words "ISRI code word 'Palms'", the following words shall be substituted, namely:—

"ISRI code word 'Palms';

Miscellaneous copper-containing skimmings, grindings, ashes, iron brass and copper, residues and slags covered by ISRI code word 'Drove';

Copper wire scrap with various types of insulation covered by ISRI code word 'Druid';

(b) in tariff item 7404 00 22, in the entry in column (2), for the words "ISRI code word 'Parch'", the following words shall be substituted, namely:—

"ISRI code word 'Parch';

High Grade-Low Lead Bronze/Brass Solids covered by ISRI code word 'Eland';

High lead bronze solids and borings covered by ISRI code word 'Elias';

Clean fired 70/30 brass shell cases free of primers and any other foreign material covered by ISRI code word 'Lace';

Clean fired 70/30 brass shell cases containing the brass primers and containing no other foreign material covered by ISRI code word 'Lady';

Clean fired 70/30 brass shells free of bullets, iron and any other foreign material covered by ISRI code word 'Lake';

Clean muffled (popped) 70/30 brass shells free of bullets, iron and any other foreign material covered by ISRI code word 'Lamb';

(5) in Chapter 75, in tariff item 7503 00 10, in the entry in column (2), for the words "other floating structures", the following words shall be substituted, namely:—

"other floating structures;

Nickel-iron batteries to be sold free of crates, copper terminal connectors and excess liquid, must be free of nickel cadmium batteries covered by ISRI code word 'Vaunt';

(6) in Chapter 76, in heading 7602, in tariff item 7602 00 10, in column (2),—

(a) for the words "ISRI code word 'Talap'", the words "ISRI code word 'Talc'" shall be substituted;

(b) for the words "ISRI code word 'Tanri'", the words "ISRI code word 'Tann'" shall be substituted;

(c) for the words "old aluminium foil covered by ISRI code word 'Testy'", the following words shall be substituted, namely:—

"New aluminium foil covered by ISRI code word 'Tetra';

Old aluminium foil covered by ISRI code word 'Tesla';

(d) for the words "ISRI code word 'Twitch'", the following words and brackets shall be substituted, namely:—

"ISRI code word 'Twitch';

Aluminium auto or truck wheels covered by ISRI code word 'Troma';

Fragmentizer aluminium scrap from automobile shredders covered by ISRI code word 'Tweak';

Burnt Fragmentizer aluminium scrap (from automobile shredders) covered by ISRI code word 'Twire';

Shredded non-ferrous scrap (predominantly aluminium) covered by ISRI code word 'Zorba';

Aluminium drosses, patterns, spellings, skimmings and sweepings covered by ISRI code word 'Thirl';

New production aluminium extrusions covered by ISRI code word 'Tata';

All aluminium radiators from automobiles covered by ISRI code word 'Tally';

Aluminium extrusions '10/10' covered by ISRI code word 'Toto';

Aluminium extrusions dealer grade covered by the word 'Tutu';

(7) in Chapter 78, in tariff item 7802 00 10, in the entry in column (2), for the words "ISRI code word 'Roses'", the following words and brackets shall be substituted, namely:—

"ISRI code word 'Roses';

Lead battery plates whether automotive, industrial or mixed covered by ISRI code word 'Rails';

Battery lugs free of scrap lead, wheel weights, battery plates, rubber or plastic case material and other foreign material covered by ISRI code word 'Rakes';

Lead covered copper cable free of armoured covered cable and foreign material covered by ISRI code word 'Relay';

Lead dross covered by ISRI code word 'Rents';

(8) in Chapter 79, in tariff item 7902 00 10, in the entry in column (2), for the word "oxidation", the following words shall be substituted, namely:—

"oxidation";

Unsorted zinc die cast scrap produced from automobile fragmentizers containing about 55% zinc-bearing scrap covered by ISRI code word 'Scroll';

(9) in Chapter 87,—

(a) in tariff item 8712 00 10, for the entry in column (4), the entry "30%" shall be substituted;

(b) in tariff items 8714 91 00 to 8714 99 90, for the entry in column (4), the entry "20%" shall be substituted.

THE FOURTH SCHEDULE
(See section 132)

In the Second Schedule to the Customs Tariff Act, against Sl. No. 24 relating to Chromium ore and concentrates, all sorts, for the entry in column (4), the entry "30%" shall be substituted.

THE FIFTH SCHEDULE

(See section 138)

Notification number and date	Amendment	Date of effect of amendment
(1)	(2)	(3)
1. G.S.R. 62 (E), dated the 6th February, 2010 [1/2010-Central Excise, dated the 6th February, 2010].	In the said notification, in paragraph 9, for the words "from the date of publication of this notification or from the date of commercial production whichever is later", the following words shall be substituted, namely:— "from the date of commercial production, or from the date of commercial production from the expanded capacity referred to in sub-clause (i) of clause (b) of paragraph 8, as the case may be".	6th day of February, 2010.
2. G.S.R. 163 (E), dated the 17th March, 2012 [12/2012-Central Excise, dated 17th March, 2012].	In the said notification, in the Table, in Sl. No: 199, against item (I),— (a) for the entry in column (4), the entry "Nil" shall be substituted; (b) the entry in column (5) shall be omitted..	17th day of March, 2012.

THE SIXTH SCHEDULE
(See section 140)

In the Third Schedule to the Central Excise Act, after S. No. 26 and the entries relating thereto, the following S.No. and entries shall be inserted, namely:—

S. No.	Heading, sub-heading or tariff item	Description of goods
(1)	(2)	(3)
"26A	2402 20 10 to 2402 20 90	All goods".

THE SEVENTH SCHEDULE
(See section 141)

In the First Schedule to the Central Excise Tariff Act,—

(1) in Chapter 4, in tariff items 0402 91 10 and 0402 99 20, for the entry in column (4), the entry "12%" shall be substituted;

(2) in Chapter 11,—

(a) for the entry in column (4) occurring against all the tariff items of heading 1107, the entry "12%" shall be substituted;

(b) for the entry in column (4) occurring against all the tariff items of heading 1108 (except tariff item 1108 20 00), the entry "12%" shall be substituted;

(3) in Chapter 13, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(4) in Chapter 14, in tariff item 1404 90 50, for the entry in column (4), the entry "6%" shall be substituted;

(5) in Chapter 15,—

(a) in all the tariff items of headings 1501 and 1502, for the entry in column (4), the entry "6%" shall be substituted;

(b) in tariff item 1503 00 00, for the entry in column (4), the entry "6%" shall be substituted;

(c) in the tariff items of headings 1504 to 1516 and 1517 (except 1517 10 22), for the entry in column (4), the entry "6%" shall be substituted;

(d) in tariff item 1517 10 22, for the entry in column (4), the entry "12%" shall be substituted;

(e) in all the tariff items of heading 1518, for the entry in column (4), the entry "6%" shall be substituted;

(f) in tariff item 1520 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(g) in all the tariff items of headings 1521 and 1522, for the entry in column (4), the entry "12%" shall be substituted;

(6) in Chapter 16, for the entry in column (4) occurring against all the tariff items, the entry "6%" shall be substituted;

(7) in Chapter 17,—

(a) for the entry in column (4) occurring against all the tariff items of headings 1701 (except tariff items 1701 13 20 and 1701 14 20), 1702 (except tariff item 1702 90 10) and 1704, the entry "12%" shall be substituted;

(b) in tariff items 1701 13 20 and 1701 14 20, for the entry in column (4), the entry "6%" shall be substituted;

(8) in Chapter 18, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(9) in Chapter 19,—

(a) in tariff items 1901 10 10 and 1901 10 90, for the entry in column (4), the entry "6%" shall be substituted;

(b) in tariff items 1901 20 00, 1901 90 10 and 1901 90 90, for the entry in column (4), the entry "12%" shall be substituted;

(c) in tariff items 1902 11 00, 1902 19 00, 1902 20 10, 1902 20 90, 1902 30 10 and 1902 30 90, for the entry in column (4), the entry "6%" shall be substituted;

(d) in tariff items 1902 40 10 and 1902 40 90, for the entry in column (4), the entry "12%" shall be substituted;

(e) in tariff item 1903 00 00, for the entry in column (4), the entry "6%" shall be substituted;

(f) for the entry in column (4) occurring against all the tariff items of heading 1904, the entry "12%" shall be substituted;

(g) in tariff item 1905 31 00, for the entry in column (4), the entry "6%" shall be substituted;

(h) in tariff items 1905 32 11, 1905 32 19 and 1905 32 90, for the entry in column (4), the entry "12%" shall be substituted;

(i) in tariff items 1905 90 10 and 1905 90 20, for the entry in column (4), the entry "6%" shall be substituted;

(10) in Chapter 20, for the entry in column (4) occurring against all the tariff items, the entry "6%" shall be substituted;

(11) in Chapter 21,—

(a) for the entry in column (4) occurring against all the tariff items of heading 2101 (except tariff items 2101 30 10, 2101 30 20 and 2101 30 90), the entry "12%" shall be substituted;

(b) for the entry in column (4) occurring against all the tariff items of headings 2102, 2103 and 2104, the entry "12%" shall be substituted;

(c) in tariff item 2105 00 00, for the entry in column (4), the entry "6%" shall be substituted;

(d) for the entry in column (4) occurring against all the tariff items of heading 2106 (except 2106 90 20 and 2106 90 92), the entry "12%" shall be substituted;

(e) in tariff item 2106 90 92, for the entry in column (4), the entry "6%" shall be substituted;

(12) in Chapter 22,—

(a) for the entry in column (4) occurring against all the tariff items of heading 2201 (except 2201 90 10), the entry "12%" shall be substituted;

(b) for the entry in column (4) occurring against all the tariff items of heading 2202 (except 2202 90 10 and 2202 90 20), the entry "12%" shall be substituted;

(c) in tariff items 2202 90 10 and 2202 90 20, for the entry in column (4), the entry "6%" shall be substituted;

(d) in tariff item 2207 20 00, for the entry in column (4), the entry "12%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of heading 2209, the entry "12%" shall be substituted;

(13) in Chapter 24,—

(a) in tariff items 2402 10 10 and 2402 10 20, for the entry in column (4), the entry "12% or Rs. 1370 per thousand, whichever is higher" shall be substituted;

(b) in the entry in column (2) occurring against the tariff item 2402 20 10, for the figures and word "60 millimetres", the figures and word "65 millimetres" shall be substituted;

(c) in tariff item 2402 20 20,—

(i) in the entry in column (2), for the figures and word "60 millimetres", the figures and word "65 millimetres" shall be substituted;

(ii) for the entry in column (4), the entry "Rs. 1463 per thousand" shall be substituted;

(d) in the entries in column (2) occurring against the tariff item 2402 20 30, for the figures and word "60 millimetres", the figures and word "65 millimetres" shall be substituted;

(e) in tariff item 2402 20 40,—

(i) in the entry in column (2), for the figures and word "60 millimetres", the figures and word "65 millimetres" shall be substituted;

(ii) for the entry in column (4), the entry "Rs. 1034 per thousand" shall be substituted;

(f) in tariff item 2402 20 50, for the entry in column (4), the entry "Rs. 1463 per thousand" shall be substituted;

(g) in tariff item 2402 20 60, for the entry in column (4), the entry "Rs. 1974 per thousand" shall be substituted;

(h) in tariff item 2402 20 90, for the entry in column (4), the entry "Rs. 2373 per thousand" shall be substituted;

(14) in Chapter 25,—

(a) in Note 6, the words "or polishing" shall be omitted;

(b) in tariff item 2503 00 10, for the entry in column (4), the entry "12%" shall be substituted;

(c) in tariff items 2515 12 20 and 2515 12 90, for the entry in column (4), the entry "12%" shall be substituted;

(d) in tariff item 2523 10 00, for the entry in column (4), the entry "12%" shall be substituted;

(e) in tariff item 2523 21 00, for the entry in column (4), the entry "12%" shall be substituted;

(f) in tariff items 2523 30 00, 2523 90 10, 2523 90 20 and 2523 90 90, for the entry in column (4), the entry "12%" shall be substituted;

(15) in Chapter 26,—

(a) in heading 2601, for the tariff items 2601 11 10 to 2601 11 90 and the entries relating thereto, the following tariff items and entries shall be substituted, namely:—

(1)	(2)	(3)	(4)
	--- Iron ore lumps (60% Fe or more)		
2601 11 11	--- 60% Fe or more but below 62% Fe	Kg.	12%
2601 11 12	--- 62% Fe or more but below 65% Fe	Kg.	12%
2601 11 19	--- above 65% Fe	Kg.	12%
	--- Iron ore lumps (below 60% Fe, including black iron ore containing up to 10% Mn)		
2601 11 21	--- below 55% Fe	Kg.	12%
2601 11 22	--- 55% Fe or more but below 58% Fe	Kg.	12%
2601 11 29	--- 58% Fe or more but below 60% Fe	Kg.	12%
	--- Iron ore fines (62% Fe or more)		
2601 11 31	--- 62% Fe or more but below 65% Fe	Kg.	12%
2601 11 39	--- above 65% Fe	Kg.	12%
	--- Iron ore Fines (below 62% Fe)		
2601 11 41	--- below 55% Fe	Kg.	12%
2601 11 42	--- 55% Fe or more but below 58% Fe	Kg.	12%
2601 11 43	--- 58% Fe or more but below 60% Fe	Kg.	12%
2601 11 49	--- 60% Fe or more but below 62% Fe	Kg.	12%
2601 11 50	--- Iron ore concentrates	Kg.	12%
2601 11 90	--- Others.	Kg.	12%";

(b) in tariff items 2601 12 10, 2601 12 90 and 2601 20 00, for the entry in column (4), the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items in heading 2602, the entry "12%" shall be substituted;

(d) in tariff items 2603 00 00, 2604 00 00 and 2605 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items in heading 2606, the entry "12%" shall be substituted;

(f) in tariff items 2607 00 00, 2608 00 00 and 2609 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(g) for the entry in column (4) occurring against all the tariff items in heading 2610, the entry "12%" shall be substituted;

(h) in tariff item 2611 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(i) for the entry in column (4) occurring against all the tariff items in heading 2612, 2613, 2614, 2615, 2616, and 2617, the entry "12%" shall be substituted;

(j) in tariff item 2618 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(k) for the entry in column (4) occurring against all the tariff items in heading 2619, 2620 and 2621, the entry "12%" shall be substituted;

(16) in Chapter 27,—

(a) for the entry in column (4) occurring against all the tariff items of headings 2701, 2702, 2703, 2704 and 2706, the entry "6%" shall be substituted;

(b) for the entry in column (4) occurring against all the tariff items of headings 2707 and 2708, the entry "14%" shall be substituted;

(c) in tariff items 2710 12 11 to 2710 12 90, in column (4), for the entry "16% + Rs. 15 per litre", the entry "14% + Rs. 15 per litre" shall be substituted;

(d) in tariff items 2710 19 10 and 2710 19 20, for the entry in column (4), the entry "14%" shall be substituted;

(e) in tariff items 2710 19 30 and 2710 19 40, in column (4), for the entry "16% + Rs. 5 per litre", the entry "14% + Rs. 5 per litre" shall be substituted;

(f) in tariff items 2710 19 50, 2710 19 60, 2710 19 70, 2710 19 80 and 2710 19 90, for the entry in column (4), the entry "14%" shall be substituted;

(g) in tariff item 2710 20 00, for the entry in column (4), the entry "14% + Rs. 15 per litre" shall be substituted;

(h) for the entry in column (4) occurring against all the tariff items of headings 2711, 2712, 2713, 2714 and 2715, the entry "14%" shall be substituted;

(17) in Chapter 28,—

(a) for the entry in column (4) occurring against all the tariff items of headings 2801, 2802, 2803, 2804 (except 2804 40 10), 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2839, 2840, 2841, 2842, 2843 and 2844 (except 2844 30 22), the entry "12%" shall be substituted;

(b) in tariff item 2845 90 90, for the entry in column (4), the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of heading 2846, the entry "12%" shall be substituted;

(d) in tariff item 2847 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of headings 2848, 2849 and 2850, the entry "12%" shall be substituted;

(f) in tariff item 2852 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(g) for the entry in column (4) occurring against all the tariff items of headings 2853 (except 2853 00 30), the entry "12%" shall be substituted;

(18) in Chapter 29, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(19) in Chapter 30,—

(a) for the entry in column (4) occurring against all the tariff items of heading 3001, the entry "6%" shall be substituted;

(b) in tariff items 3002 20 11 to 3002 30 00, for the entry in column (4), the entry "6%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of headings 3003, 3004 and 3005, for the entry in column (4), the entry "6%" shall be substituted;

(d) for the entry in column (4) occurring against all the tariff items of heading 3006 (except 3006 60 10, 3006 60 20, 3006 60 30 and 3006 92 00), for the entry in column (4), the entry "6%" shall be substituted;

(20) in Chapter 31, for the entry in column (4) occurring against all the tariff items of headings 3102, 3103, 3104 and 3105, the entry "12%" shall be substituted;

(21) in Chapter 32,—

(a) for the entry in column (4) occurring against all the tariff items (except 3215 90 10 and 3215 90 20), the entry "12%" shall be substituted;

(b) in tariff items 3215 90 10 and 3215 90 20, for the entry in column (4), the entry "6%" shall be substituted;

(22) in Chapter 33, for the entry in column (4) occurring against all the tariff items of headings 3301, 3302, 3303, 3304, 3305, 3306 and 3307 (except 3307 41 00), the entry "12%" shall be substituted;

(23) in Chapter 34, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(24) in Chapter 35, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(25) in Chapter 36, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(26) in Chapter 37, for the entry in column (4) occurring against all the tariff items of headings 3701, 3702, 3703, 3704 and 3707, for the entry in column (4), the entry "12%" shall be substituted;

(27) in Chapter 38,—

(a) for the entry in column (4) occurring against all the tariff items (except 3824 50 10, 3825 10 00, 3825 20 00 and 3825 30 00), the entry "12%" shall be substituted;

(b) in tariff item 3824 50 10, for the entry in column (4), the entry "6%" shall be substituted;

(28) in Chapter 39,—

(a) for the entry in column (4) occurring against all the tariff items (except 3916 10 20, 3916 20 11, 3916 20 91 and 3916 90 10), the entry "12%" shall be substituted;

(b) in tariff items 3916 10 20, 3916 20 11, 3916 20 91 and 3916 90 10, for the entry in column (4), the entry "6%" shall be substituted;

(29) in Chapter 40,—

(a) for the entry in column (4) occurring against all the tariff items of heading 4002, the entry "12%" shall be substituted;

(b) in tariff items 4003 00 00 and 4004 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of headings 4005, 4006, 4007, 4008 (except 4008 19 10, 4008 21 10 and 4008 29 20), 4009, 4010 and 4011, the entry "12%" shall be substituted;

(d) in tariff items 4012 90 10 to 4012 90 90, for the entry in column (4), the entry "12%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of headings 4013, 4014 (except 4014 10 10 and 4014 10 20), 4015, 4016 and 4017, the entry "12%" shall be substituted;

(30) in Chapter 42, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(31) in Chapter 43, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(32) in Chapter 44,—

(a) for the entry in column (4) occurring against all the tariff items of headings 4401, 4403, 4404, 4406, 4408 (except 4408 10 30, 4408 31 30, 4408 39 30 and 4408 90 20), 4409, 4410, 4411 and 4412, the entry "12%" shall be substituted;

(b) in tariff items 4413 00 00 and 4414 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of headings 4415 and 4416, the entry "12%" shall be substituted;

(d) in tariff item 4417 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of headings 4418, 4419, 4420 and 4421, the entry "12%" shall be substituted;

(33) in Chapter 45, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(34) in Chapter 46, for the entry in column (4) occurring against all the tariff items, the entry "6%" shall be substituted;

(35) in Chapter 47,—

(a) in tariff items 4701 00 00 and 4702 00 00, for the entry in column (4), the entry "6%" shall be substituted;

(b) for the entry in column (4) occurring against all the tariff items of headings 4703 and 4704, the entry "6%" shall be substituted;

(c) in tariff item 4705 00 00, for the entry in column (4), the entry "6%" shall be substituted;

(d) for the entry in column (4) occurring against all the tariff items of heading 4706, the entry "6%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of heading 4707, the entry "12%" shall be substituted;

(36) in Chapter 48,—

(a) after Note 13, the following Note shall be inserted, namely:—

"14. Notwithstanding anything contained in Note 12, if the paper and paper products of headings 4811, 4816 or 4820 are printed with any character, name, logo, motif or format, they shall remain classified under the respective headings as long as such products are intended to be used for further printing or writing.";

(b) for the entry in column (4) occurring against all the tariff items of heading 4802, the entry "6%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of heading 4803, the entry "12%" shall be substituted;

(d) for the entry in column (4) occurring against all the tariff items of headings 4804 and 4805, the entry "6%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of heading 4806 (except 4806 20 00 and 4806 40 10), the entry "12%" shall be substituted;

(f) in tariff items 4806 20 00 and 4806 40 10, for the entry in column (4), the entry "6%" shall be substituted;

(g) for the entry in column (4) occurring against all the tariff items of headings 4807 and 4808, the entry "6%" shall be substituted;

(h) for the entry in column (4) occurring against all the tariff items of heading 4809, the entry "12%" shall be substituted;

(i) for the entry in column (4) occurring against all the tariff items of heading 4810, the entry "6%" shall be substituted;

(j) for the entry in column (4) occurring against all the tariff items of heading 4811, the entry "12%" shall be substituted;

(k) in tariff item 4812 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(l) for the entry in column (4) occurring against all the tariff items of headings 4813, 4814 and 4816, the entry "12%" shall be substituted;

(m) in tariff items 4817 10 00 and 4817 20 00, for the entry in column (4), the entry "6%" shall be substituted;

(n) for the entry in column (4) occurring against all the tariff items of headings 4818, 4819 (except 4819 20 10), 4820, 4821, 4822 and 4823 (except 4823 90 11), the entry "12%" shall be substituted;

(37) in Chapter 49,—

(a) for the entry in column (4) occurring against all the tariff items of heading 4908, the entry "12%" shall be substituted;

(b) for the entry in column (4) occurring against all the tariff items of headings 4909 and 4910, the entry "6%" shall be substituted;

(38) in Chapter 50, for the entry in column (4) occurring against all the tariff items of headings 5004, 5005, 5006 and 5007, the entry "12%" shall be substituted;

(39) in Chapter 51, for the entry in column (4) occurring against all the tariff items of headings 5105, 5106, 5107, 5108, 5109, 5110, 5111, 5112 and 5113, the entry "12%" shall be substituted;

(40) in Chapter 52, for the entry in column (4) occurring against all the tariff items of headings 5204, 5205, 5206, 5207, 5208, 5209, 5210, 5211 and 5212, the entry "12%" shall be substituted;

(41) in Chapter 53, for the entry in column (4) occurring against all the tariff items of headings 5302, 5305, 5306, 5307 (except 5307 10 90), 5308 (except 5308 10 10, 5308 10 20 and 5308 10 90), 5309, 5310 and 5311, the entry "12%" shall be substituted;

(42) in Chapter 54, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(43) in Chapter 55, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(44) in Chapter 56, for the entry in column (4) occurring against all the tariff items of headings 5601, 5602, 5603, 5604, 5605, 5606, 5607, 5608 and 5609, the entry "12%" shall be substituted;

(45) in Chapter 57, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(46) in Chapter 58,—

(a) for the entry in column (4) occurring against all the tariff items of heading 5801 (except 5801 35 00), the entry "12%" shall be substituted;

(b) for the entry in column (4) occurring against all the tariff items of headings 5802, 5803 and 5804 (except 5804 30 00), the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of heading 5805, the entry "6%" shall be substituted;

(d) for the entry in column (4) occurring against all the tariff items of heading 5806, the entry "12%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of heading 5807, the entry "6%" shall be substituted;

(f) for the entry in column (4) occurring against all the tariff items of headings 5808, 5809, 5810 and 5811, the entry "12%" shall be substituted;

(47) in Chapter 59, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(48) in Chapter 60, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(49) in Chapter 61, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(50) in Chapter 62, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(51) in Chapter 63,—

(a) for the entry in column (4) occurring against all the tariff items of headings 6301, 6302, 6303, 6304, 6305, 6306 and 6307, the entry "12%" shall be substituted;

(b) in tariff item 6308 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(52) in Chapter 64, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(53) in Chapter 65,—

(a) for the entry in column (4) occurring against all the tariff items of headings 6501 and 6502, the entry "12%" shall be substituted;

(b) in tariff item 6504 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of headings 6505 and 6506, the entry "12%" shall be substituted;

(d) in tariff item 6507 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(54) in Chapter 66,—

(a) for the entry in column (4) occurring against all the tariff items of heading 6601, the entry "6%" shall be substituted;

(b) in tariff item 6602 00 00, for the entry in column (4), the entry "6%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of heading 6603, the entry "12%" shall be substituted;

(55) in Chapter 67, for the entry in column (4) occurring against all the tariff items of headings 6702, 6703 and 6704, the entry "12%" shall be substituted;

(56) in Chapter 68, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(57) in Chapter 69,—

(a) for the entry in column (4) occurring against all the tariff items (except 6901 00 10 and 6904 10 00), the entry "12%" shall be substituted;

(b) in tariff items 6901 00 10 and 6904 10 00, for the entry in column (4), the entry "6%" shall be substituted;

(58) in Chapter 70,—

(a) for the entry in column (4) occurring against all the tariff items (except 7012 00 00, 7018 10 10, 7018 10 20, 7020 00 11, 7020 00 12 and 7020 00 21), the entry "12%" shall be substituted;

(b) in tariff items 7020 00 11, 7020 00 12 and 7020 00 21, for the entry in column (4), the entry "6%" shall be substituted;

(59) in Chapter 71,—

(a) for Note 13, the following Note shall be substituted, namely:—

13. For the purposes of headings 7113 and 7114, the processes of affixing or embossing trade name or brand name on articles of jewellery or on articles of goldsmiths' or silversmiths' wares of precious metal or of metal clad with precious metal, shall amount to "manufacture".;

(b) for the entry in column (4) occurring against all the tariff items of heading 7101, 7103, 7104 (except 7104 10 00), 7105 and 7106, the entry "12%" shall be substituted;

(c) in tariff item 7104 10 00, for the entry in column (4), the entry "6%" shall be substituted;

(d) in tariff item 7107 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of heading 7108, the entry "12%" shall be substituted;

(f) in tariff item 7109 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(g) for the entry in column (4) occurring against all the tariff items of heading 7110, the entry "12%" shall be substituted;

(h) in tariff item 7111 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(i) for the entry in column (4) occurring against all the tariff items of headings 7112, 7113, 7114, 7115 and 7116, the entry "12%" shall be substituted;

(j) for the entry in column (4) occurring against all the tariff items of heading 7117, the entry "6%" shall be substituted;

(k) for the entry in column (4) occurring against all the tariff items of heading 7118, the entry "12%" shall be substituted;

(60) in Chapter 72,—

(a) after Note 5, the following Note shall be inserted, namely:—

'6. In relation to the products of heading 7208, the process of oiling and pickling shall amount to "manufacture".;

(b) for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(61) in Chapter 73, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(62) in Chapter 74,—

(a) in headings 7401, 7402 and 7403, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(b) in heading 7404,—

(i) in tariff item 7404 00 11, for the entry in column (4), the entry "12%" shall be substituted;

(ii) in tariff item 7404 00 12,—

(A) in the entry in column (2), for the words "ISRI code word 'Palms' ", the following words shall be substituted, namely:—

"ISRI code word 'Palms';

miscellaneous copper-containing skimmings, grindings, ashes, iron brass and copper, residues and slags covered by ISRI code word 'Drove';

copper wire scrap with various types of insulation covered by ISRI code word 'Druid';

(B) for the entry in column (4), the entry "12%" shall be substituted;

(iii) in tariff items 7404 00 19 and 7404 00 21, for the entry in column (4), the entry "12%" shall be substituted;

(iv) in tariff item 7404 00 22,—

(A) in the entry in column (2), for the words "ISRI code word 'Parch' ", the following words shall be substituted, namely:—

"ISRI code word 'Parch';

high grade-low lead bronze/brass solids covered by ISRI code word 'Eland';

high lead bronze solids and borings covered by ISRI code word 'Elias';

clean fired 70/30 brass shell cases free of primers and any other foreign material covered by ISRI code word 'Lace';

clean fired 70/30 brass shell cases containing the brass primers, and containing no other foreign material covered by ISRI code word 'Lady';

clean fired 70/30 brass shells free of bullets, iron and any other foreign material covered by ISRI code word 'Lake';

clean muffled (popped) 70/30 brass shells free of bullets, iron and any other foreign material covered by ISRI code word 'Lamb';

(B) for the entry in column (4), the entry "12%" shall be substituted;

(v) in tariff items 7404 00 23 and 7404 00 29, for the entry in column (4), the entry "12%" shall be substituted;

(c) in tariff item 7405 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(d) in headings 7406, 7407, 7408, 7409, 7410, 7411 and 7412, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(e) in tariff item 7413 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(f) for the entry in column (4) occurring against all the tariff items of headings 7415, 7418 and 7419, the entry "12%" shall be substituted;

(63) in Chapter 75,—

(a) for the entry in column (4) occurring against all the tariff items of headings 7501 and 7502, the entry "12%" shall be substituted;

(b) in tariff item 7503 00 10,—

(A) in the entry in column (2), for the words "other floating structures", the following words shall be substituted, namely:—

"other floating structures;

nickel-iron batteries to be sold free of crates, copper terminal connectors and excess liquid, must be free of nickel cadmium batteries covered by ISRI code word 'Vaunt';

(B) for the entry in column (4), the entry "12%" shall be substituted;

(c) in tariff items 7503 00 90 and 7504 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(d) for the entry in column (4) occurring against all the tariff items of headings 7505, 7506, 7507 and 7508, the entry "12%" shall be substituted;

(64) in Chapter 76,—

(a) after Note 2, the following Note shall be inserted, namely:—

'3. In relation to the products of heading 7607, the process of cutting, slitting and printing of aluminium foils shall amount to "manufacture".';

(b) for the entry in column (4) occurring against all the tariff items of heading 7601, the entry "12%" shall be substituted;

(c) in heading 7602,—

(i) in tariff item 7602 00 10,—

(A) in column (2),—

(I) for the words "ISRI code word 'Talap' ", the words "ISRI code word 'Talc' " shall be substituted;

(II) for the words "ISRI code word 'Tanri' ", the words "ISRI code word 'Tann' " shall be substituted;

(III) for the words "old aluminium foil covered by ISRI code word 'Testy' ", the words "new aluminium foil covered by ISRI code word 'Tetra' old aluminium foil covered by ISRI code word 'Tesla';" shall be substituted;

(IV) for the word "ISRI code word 'Twang' ", the following words and brackets shall be substituted, namely:—

"ISRI code word 'Twang';

aluminium auto or truck wheels covered by ISRI code word 'Troma';

fragmentizer aluminium scrap from automobile shredders covered by ISRI code word 'Tweak';

burnt Fragmentizer aluminium scrap (from automobile shredders) covered by ISRI code word 'Twire';

shredded non-ferrous scrap (predominantly aluminium) covered by ISRI code word 'Zorba';

aluminium drosses, spatters, spellings, skimmings and sweepings covered by ISRI code word 'Thirl';

new production aluminium extrusions covered by ISRI code word 'Tata';

all aluminium radiators from automobiles covered by ISRI code word 'Tally';

aluminium extrusions '10/10' covered by ISRI code word 'Toto';

aluminium extrusions dealer grade covered by the word 'Tutu';

(B) for the entry in column (4), the entry "12%" shall be substituted;

(ii) in tariff item 7602 00 90, for the entry in column (4), the entry "12%" shall be substituted;

(iii) for the entry in column (4), occurring against all the tariff items of headings 7603, 7604, 7605, 7606, 7607 and 7608, the entry "12%" shall be substituted;

(iv) in tariff item 7609 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(v) for the entry in column (4), occurring against all the tariff items of heading 7610, the entry "12%" shall be substituted;

(vi) in tariff item 7611 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(vii) for the entry in column (4) occurring against all the tariff items of headings 7612, 7613, 7614, 7615 and 7616, the entry "12%" shall be substituted;

(65) in Chapter 78,—

(a) for the entry in column (4) occurring against all the tariff items of heading 7801, the entry "12%" shall be substituted;

(b) in tariff item 7802 00 10,—

(i) in the entry in column (2), for the words "ISRI code word 'Roses' ", the following words shall be substituted, namely:—

"ISRI code word 'Roses';

lead battery plates whether automotive, industrial or mixed covered by ISRI code word 'Rails';

battery lugs free of scrap lead, wheel weights, battery plates, rubber or plastic case material and other foreign material covered by ISRI code word 'Rakes';

lead covered copper cable free of armoured covered cable and foreign material covered by ISRI code word 'Relay';

lead dross covered by ISRI code word 'Rents';

(ii) for the entry in column (4), the entry "12%" shall be substituted;

(c) in tariff item 7802 00 90, for the entry in column (4), the entry "12%" shall be substituted;

(d) for the entry in column (4) occurring against all the tariff items of headings 7804 and 7806, the entry "12%" shall be substituted;

(66) in Chapter 79,—

(a) for the entry in column (4) occurring against all the tariff items of heading 7901, the entry "12%" shall be substituted;

(b) in tariff item 7902 00 10,—

(i) in the entry in column (2), for the word "oxidation", the following words shall be substituted, namely:—

'oxidation;

unsorted zinc die cast scrap produced from automobile fragmentizers containing about 55% zinc-bearing scrap covered by ISRI code word "Scroll";

(ii) for the entry in column (4), the entry "12%" shall be substituted;

(c) in tariff item 7902 00 90, for the entry in column (4), the entry "12%" shall be substituted;

(d) for the entry in column (4) occurring against all the tariff items of headings 7903, 7904, 7905 and 7907, the entry "12%" shall be substituted;

(67) in Chapter 80, for the entry in column (4) occurring against all the tariff items of headings 8001, 8002, 8003 and 8007, the entry "12%" shall be substituted;

(68) in Chapter 81, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(69) in Chapter 82,—

(a) for the entry in column (4) occurring against all the tariff items of headings 8201, 8202, 8203, 8204, 8205, 8206, 8207, 8208 and 8209, the entry "12%" shall be substituted;

(b) in tariff item 8210 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of headings 8211 and 8212, the entry "12%" shall be substituted;

(d) in tariff item 8213 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of heading 8214, the entry "12%" shall be substituted;

(f) for the entry in column (4) occurring against all the tariff items of heading 8215, the entry "6%" shall be substituted;

(70) in Chapter 83, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(71) in Chapter 84,—

(a) for the entry in column (4) occurring against all the tariff items of headings 8401 to 8423, 8424 (except 8424 81 00), 8425 to 8431, 8434, 8435, 8438 to 8451 and 8452 (except 8452 10 12, 8452 10 22, 8452 30 10, 8452 30 90, 8452 90 11, 8452 90 19, 8452 90 91 and 8452 90 99), the entry "12%" shall be substituted;

(b) in tariff items 8452 10 12, 8452 10 22, 8452 30 10, 8452 30 90, 8452 90 11, 8452 90 19, 8452 90 91 and 8452 90 99, for the entry in column (4), the entry "6%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of headings 8453 to 8468, 8469 (except 8469 00 30 and 8469 00 40), 8470 to 8478 and 8479 (except 8479 89 91 and 8479 89 92), the entry "12%" shall be substituted;

(d) in tariff item 8479 89 92, for the entry in column (4), the entry "6%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of headings 8480 to 8484, 8486 and 8487, the entry "12%" shall be substituted;

(72) in Chapter 85,—

(a) after Note 10, the following Note shall be inserted, namely:—

'11. The processes of matching, batching and charging of Lithium ion batteries or the making of battery packs shall amount to "manufacture".;

(b) for the entry in column (4) occurring against all the tariff items of headings 8501 to 8519, 8521, 8522, 8523, 8525 to 8533, the entry "12%" shall be substituted;

(c) in tariff item 8534 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(d) for the entry in column (4) occurring against all the tariff items of headings 8535 to 8547 the entry "12%" shall be substituted;

(e) in tariff item 8548 90 00, for the entry in column (4), the entry "12%" shall be substituted;

(73) in Chapter 86,—

(a) for the entry in column (4) occurring against all the tariff items of headings 8601 to 8606 (except 8604 00 00), the entry "6%" shall be substituted;

(b) in tariff item 8604 00 00 and in all the tariff items of headings 8607, 8608 and in tariff item 8609 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(74) in Chapter 87,—

(a) for the entry in column (4) occurring against all the tariff items of heading 8701, the entry "12%" shall be substituted;

(b) in tariff items 8702 10 11, 8702 10 12 and 8702 10 19, for the entry in column (4), the entry "27%" shall be substituted;

(c) in tariff items 8702 10 91 to 8702 10 99, for the entry in column (4), the entry "12%" shall be substituted;

(d) in tariff items 8702 90 11 and 8702 90 12, for the entry in column (4), the entry "27%" shall be substituted;

(e) in tariff item 8702 90 13, for the entry in column (4), the entry "12%" shall be substituted;

(f) in tariff item 8702 90 19, for the entry in column (4), the entry "27%" shall be substituted;

(g) in tariff items 8702 90 20 to 8702 90 99, for the entry in column (4), the entry "12%" shall be substituted;

(h) in tariff item 8703 10 10, for the entry in column (4), the entry "12%" shall be substituted;

(i) in tariff items 8703 10 90 to 8703 22 99, for the entry in column (4), the entry "24%" shall be substituted;

(j) in tariff item 8703 23 10, for the entry in column (4), the entry "27%" shall be substituted;

(k) in tariff item 8703 23 20, for the entry in column (4), the entry "24%" shall be substituted;

(l) in tariff items 8703 23 91, 8703 23 92, 8703 23 99 and 8703 24 10, for the entry in column (4), the entry "27%" shall be substituted;

- (m) in tariff item 8703 24 20, for the entry in column (4), the entry "24%" shall be substituted;
- (n) in tariff items 8703 24 91 to 8703 24 99, for the entry in column (4), the entry "27%" shall be substituted;
- (o) in tariff items 8703 31 10 to 8703 31 99, for the entry in column (4), the entry "24%" shall be substituted;
- (p) in tariff item 8703 32 10, for the entry in column (4), the entry "27%" shall be substituted;
- (q) in tariff item 8703 32 20, for the entry in column (4), the entry "24%" shall be substituted;
- (r) in tariff items 8703 32 91 to 8703 33 10, for the entry in column (4), the entry "27%" shall be substituted;
- (s) in tariff item 8703 33 20, for the entry in column (4), the entry "24%" shall be substituted;
- (t) in tariff items 8703 33 91 to 8703 33 99, for the entry in column (4), the entry "27%" shall be substituted;
- (u) in tariff item 8703 90 10, for the entry in column (4), the entry "12%" shall be substituted;
- (v) in tariff item 8703 90 90, for the entry in column (4), the entry "27%" shall be substituted;
- (w) in tariff item 8704 10 10, for the entry in column (4), the entry "12%" shall be substituted;
- (x) in tariff item 8704 10 90, for the entry in column (4), the entry "24%" shall be substituted;
- (y) in tariff items 8704 21 10 to 8704 31 20, for the entry in column (4), the entry "12%" shall be substituted;
- (z) in tariff item 8704 31 90, for the entry in column (4), the entry "24%" shall be substituted;
- (za) in tariff item 8704 32 11, for the entry in column (4), the entry "12%" shall be substituted;
- (zb) in tariff items 8704 32 19 and 8704 32 90, for the entry in column (4), the entry "24%" shall be substituted;
- (zc) in tariff items 8704 90 11 and 8704 90 12, for the entry in column (4), the entry "12%" shall be substituted;
- (zd) in tariff items 8704 90 19 and 8704 90 90, for the entry in column (4), the entry "24%" shall be substituted;
- (ze) for the entry in column (4) occurring against all the tariff items of heading 8705, the entry "12%" shall be substituted;
- (zf) in tariff items 8706 00 11 and 8706 00 19, for the entry in column (4), the entry "12%" shall be substituted;
- (zg) in tariff item 8706 00 21, for the entry in column (4), the entry "24%" shall be substituted;
- (zh) in tariff item 8706 00 29, for the entry in column (4), the entry "15%" shall be substituted;
- (zi) in tariff item 8706 00 31, for the entry in column (4), the entry "12%" shall be substituted;
- (zj) in tariff item 8706 00 39, for the entry in column (4), the entry "24%" shall be substituted;
- (zk) in tariff item 8706 00 41, for the entry in column (4), the entry "12%" shall be substituted;
- (zl) in tariff item 8706 00 42, for the entry in column (4), the entry "15%" shall be substituted;
- (zm) in tariff items 8706 00 43 and 8706 00 49, for the entry in column (4), the entry "25%" shall be substituted;
- (zn) in tariff item 8706 00 50, for the entry in column (4), the entry "12%" shall be substituted;
- (zo) for the entry in column (4) occurring against all the tariff items of headings 8707 to 8709, the entry "12%" shall be substituted;
- (zp) in tariff item 8710 00 00, for the entry in column (4), the entry "12%" shall be substituted;
- (zq) for the entry in column (4) occurring against all the tariff items of headings 8711, 8712, 8714, 8715 and 8716, the entry "12%" shall be substituted;
- (75) in Chapter 88,—
- (a) for the entry in column (4) occurring against all the tariff items of heading 8801, the entry "6%" shall be substituted;

(b) for the entry in column (4) occurring against all the tariff items of headings 8802 (except 8802 60 00) and 8803, the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of headings 8804 and 8805, the entry "6%" shall be substituted;

(76) in Chapter 89,—

(a) for the entry in column (4) occurring against all the tariff items of heading 8901, the entry "6%" shall be substituted;

(b) for the entry in column (4) occurring against all the tariff items of heading 8903, the entry "12%" shall be substituted;

(c) in tariff item 8904 00 00, for the entry in column (4), the entry "6%" shall be substituted;

(d) for the entry in column (4) occurring against all the tariff items of heading 8905, the entry "6%" shall be substituted;

(e) in tariff item 8906 90 00, for the entry in column (4), the entry "6%" shall be substituted;

(f) for the entry in column (4) occurring against all the tariff items of heading 8907, the entry "12%" shall be substituted;

(g) in tariff item 8908 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(77) in Chapter 90,—

(a) for the entry in column (4) occurring against all the tariff items of heading 9001 (except 9001 40 10, 9001 40 90 and 9001 50 00), the entry "12%" shall be substituted;

(b) in tariff items 9001 40 10, 9001 40 90 and 9001 50 00, for the entry in column (4), the entry "6%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of headings 9002 to 9008, 9010 to 9016 and 9017 (except 9017 20 10, 9017 20 20, 9017 20 30 and 9017 20 90), the entry "12%" shall be substituted;

(d) in tariff items 9017 20 10, 9017 20 20, 9017 20 30 and 9017 20 90, for the entry in column (4), the entry "6%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of headings 9018 and 9019, the entry "12%" shall be substituted;

(f) in tariff item 9020 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(g) for the entry in column (4) occurring against all the tariff items of headings 9022 to 9032, the entry "12%" shall be substituted;

(h) in tariff item 9033 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(78) in Chapter 91, for the entry in column (4) occurring against all the tariff items, the entry "12%" shall be substituted;

(79) in Chapter 92,—

(a) for the entry in column (4) occurring against all the tariff items of headings 9201, 9202 and 9205, the entry "12%" shall be substituted;

(b) in tariff item 9206 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of headings 9207 to 9209, the entry "12%" shall be substituted;

(80) in Chapter 93,—

(a) for the entry in column (4) occurring against all the tariff items of heading 9301, the entry "6%" shall be substituted;

(b) in tariff item 9302 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of heading 9303, the entry "12%" shall be substituted;

(d) in tariff item 9304 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of headings 9305 and 9306, the entry "12%" shall be substituted;

(f) in tariff item 9307 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(81) in Chapter 94,—

(a) for the entry in column (4) occurring against all the tariff items (except 9405 50 10), the entry "12%" shall be substituted;

(b) in tariff item 9405 50 10, for the entry in column (4), the entry "6%" shall be substituted;

(82) in Chapter 95, for the entry in column (4) occurring against all the tariff items of headings 9503 to 9508 (except 9508 10 00), the entry "12%" shall be substituted;

(83) in Chapter 96,—

(a) for the entry in column (4) occurring against all the tariff items of headings 9601 to 9603, the entry "12%" shall be substituted;

(b) in tariff item 9604 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(c) for the entry in column (4) occurring against all the tariff items of headings 9605, 9606 (except 9606 21 00, 9606 22 00, 9606 29 10, 9606 29 90 and 9606 30 10), 9607 and 9608, the entry "12%" shall be substituted;

(d) in tariff items 9606 21 00, 9606 22 00, 9606 29 10, 9606 29 90 and 9606 30 10, for the entry in column (4), the entry "6%" shall be substituted;

(e) for the entry in column (4) occurring against all the tariff items of heading 9609, the entry "6%" shall be substituted;

(f) in tariff item 9611 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(g) for the entry in column (4) occurring against all the tariff items of headings 9612 and 9613, the entry "12%" shall be substituted;

(h) in tariff item 9614 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(i) for the entry in column (4) occurring against all the tariff items of headings 9616 and 9617, the entry "12%" shall be substituted;

(j) in tariff item 9618 00 00, for the entry in column (4), the entry "12%" shall be substituted;

(k) for the entry in column (4) occurring against all the tariff items of heading 9619, the entry "6%" shall be substituted.

THE EIGHTH SCHEDULE
(See section 144)

Provisions of CENVAT Credit Rules, 2004 to be amended	Amendment	Period of effect of amendment
(1)	(2)	(3)
Sub-rule (6A) of rule 6 of the CENVAT Credit Rules, 2004 as inserted by CENVAT Credit (Amendment) Rules, 2011 <i>vide</i> notification number G.S.R. 134(E), dated the 1st March, 2011 [3/2011-Central Excise (N.T.), dated the 1st March, 2011].	In the CENVAT Credit Rules, 2004, in rule 6, after sub-rule (6), the following sub-rule shall be inserted with effect from the 10th day of February, 2006, namely:— "(6A) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone or to a Developer of a Special Economic Zone for their authorised operations."	From 10th February, 2006 to 28th February, 2011.

THE NINTH SCHEDULE
(See section 152)

In the Seventh Schedule to the Finance Act, 2001, in the entry in column (2) occurring against the tariff items 2402 20 10, 2402 20 20, 2402 20 30 and 2402 20 40, for the figures and word "60 millimetres", the figures and word "65 millimetres" shall respectively be substituted.

THE TENTH SCHEDULE
(See section 154)

In the Seventh Schedule to the Finance Act, 2005, in the entry in column (2) occurring against the tariff items 2402 20 10, 2402 20 20, 2402 20 30 and 2402 20 40, for the figures and word "60 millimetres", the figures and word "65 millimetres" shall respectively be substituted.

Sd/-
V. K. BHASIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTH,
Secretary to Government.



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The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. LIV]

WEDNESDAY, JANUARY 30, 2013/MAGHA 10, 1934

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 30th January, 2013.

No. RPB/11-2013/Act.-24-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 31st May, 2012, Jyaishta 10, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 31st May, 2012, is hereby published for general information:-

THE CONSTITUTION (SCHEDULED TRIBES) ORDER (AMENDMENT) ACT, 2012

AN

ACT

(Act No. 24 of 2012)

[31st May, 2012]

further to amend the Constitution (Scheduled Tribes) Order, 1950 to modify the list of Scheduled Tribes in the State of Karnataka

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows :-

1. This Act may be called the Constitution (Scheduled Tribes) Order, Short title. (Amendment) Act, 2012.

Amendment of
Part VI of
Constitution
(Scheduled
Tribes) Order,
1950.

2. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950, in C.O.22, Part VI.- *Karnataka*, in entry 37, after "Meda", insert, "Medara".

Sd/-
V. K. BHASIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTH,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 30th January, 2013.

No. RPB/12-2013/Act.-25-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 4th June, 2012, Jyaishta 14, 1934 (Sake)The following Act of Parliament has received the assent of the President on the 2nd June, 2012, is hereby published for general information:-

THE RAILWAY PROPERTY (UNLAWFUL POSSESSION)

AMENDMENT ACT, 2012

AN

(Act No. 25 of 2012)

ACT

[2nd June, 2012]*to amend the Railway Property (Unlawful Possession) Act, 1966.*

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Railway Property (Unlawful Possession) Amendment Act, 2012.

Short title and commencement

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

29 of 1966.

2. In the Railway Property (Unlawful Possession) Act, 1966 (hereinafter referred to as the principal Act), in section 3,—

Amendment of section 3.

(i) for the marginal heading, the following marginal heading shall be substituted, namely:—

"Penalty for theft, dishonest misappropriation or unlawful possession of railway property.";

(ii) for the words "Whoever is found, or is proved", the words "Whoever commits theft, or dishonestly misappropriates or is found, or is proved" shall be substituted;

(iii) after clause (b), the following *Explanation* shall be inserted, namely:—

'Explanation.—For the purposes of this section, "theft" and "dishonest misappropriation" shall have the same meanings as assigned to them respectively in section 378 and section 403 of the Indian Penal Code.'

45 of 1860.

Amendment
of section 4.

3. In section 4 of the principal Act,—

(i) for the marginal heading, the following marginal heading shall be substituted, namely:—

"Punishment for abetment, conspiracy or connivance at offences.";

(ii) for the words "Any owner", the words "Whoever abets or conspires in the commission of an offence punishable under this Act, or any owner" shall be substituted;

(iii) the following *Explanation* shall be inserted, namely:—

'Explanation.—For the purposes of this section, the words "abet" and "conspire" shall have the same meanings as assigned to them respectively in sections 107 and 120A of the Indian Penal Code.'

45 of 1860.

Amendment
of section 8.

4. In section 8 of the principal Act,—

(i) for the marginal heading, the following marginal heading shall be substituted, namely:—

"Inquiry how to be made.";

(ii) in sub-section (1), for the words "When any person is arrested", the words "When an officer of the Force receives information about the commission of an offence punishable under this Act, or when any person is arrested" shall be substituted.

Sd/-

V. K. BHASIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,

Secretary to Government.



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The Gujarat Government Gazette

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MONDAY, FEBRUARY 11, 2013/MAGHA 22, 1934

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat

Legislative And Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 11th February, 2013

No. RPB/1-2013/Ord.-01-2013/E:- The following Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 21st January, 2013 is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 21st January, 2013/Magha 1, 1934 (Saka)

THE SECURITIES AND EXCHANGE BOARD OF INDIA (AMENDMENT) ORDINANCE, 2013

No. 1 OF 2013

Promulgated by the President in the Sixty-third Year of the Republic of India.

An Ordinance further to amend the Securities and Exchange Board of India Act, 1992.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :-

1. (1) This Ordinance may be called the Securities and Exchange Board of India (Amendment) Ordinance, 2013.

Short title
and
commence-
ment.

(2) It shall come into force at once.

Amendment
of section
15M.

2. In section 15M of the Securities and Exchange Board of India Act, 15 of 1992, for sub-section (1), the following sub-sections shall be substituted, namely:-

"(1) A person shall not be qualified for appointment as the Presiding Officer of the Securities Appellate Tribunal unless he -

(a) is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court; or

(b) is a sitting or retired Judge of a High Court who has completed not less than seven years of service as a Judge in a High Court.

(1A) The Presiding Officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee."

Sd/-

PRANAB MUKHERJEE,
President

N. L. MEENA,
Additional Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTH,
Secretary to Government.



सत्यमेव जयते



The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. LIV] WEDNESDAY, FEBRUARY 20, 2013/PHALGUNA 1, 1934

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 20th February, 2013.

No. RPB/2-2013/Ord.-02-2013-E :- The following Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 30th January, 2013 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 30th January, 2013/Magha 10, 1934 (Saka)

THE READJUSTMENT OF REPRESENTATION OF SCHEDULED CASTES AND SCHEDULED TRIBES IN PARLIAMENTARY AND ASSEMBLY CONSTITUENCIES ORDINANCE, 2013

No. 2 OF 2013

Promulgated by the President in the Sixty-fourth Year of the Republic of India.

An Ordinance to provide for the readjustment of seats in the House of the People and in the Legislative Assemblies of the States and for the readjustment of territorial constituencies therefor, insofar as such readjustment is necessitated by the inclusion in or exclusion from the lists of the Scheduled Castes and the Scheduled Tribes and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in Session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Ordinance, 2013.

Short title and
commencement.

(2) It shall come into force at once.

2. In this Ordinance, unless the context otherwise requires,—

Definitions.

(a) "Census Commissioner" means the Census Commissioner appointed under sub-section (1) of section 4 of the Census Act, 1948;

(b) "Commission" means the Election Commission referred to in article 324 of the Constitution;

(c) "Delimitation Act" means the Delimitation Act, 2002;

33 of 2002.

(d) "Delimitation Order" means the Delimitation of Parliamentary and Assembly Constituencies Order, 2008;

(e) "Last census" means the census held in India in 2001;

(f) "Scheduled Castes Orders" means the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Castes) (Union Territories) Order, 1951, the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 and the Constitution (Puducherry) Scheduled Castes Order 1964, made by the President under article 341 of the Constitution;

(g) "Scheduled Tribes Orders" means the Constitution (Scheduled Tribes) Order, 1950, the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 and the Constitution (Sikkim) Scheduled Tribes Order, 1978, made by the President under article 342 of the Constitution;

(h) "State" includes a Union territory having a Legislative Assembly but does not include the State of Jammu and Kashmir.

Estimation of
population of
Scheduled
Castes and
Scheduled
Tribes.

3. (1) As soon as may be after the commencement of this Ordinance, the population as at the last census, of the Scheduled Castes or, as the case may be, of the Scheduled Tribes, in each State shall be ascertained or estimated by the Census Commissioner.

(2) Where by reason of the amendments made in the Scheduled Castes Orders and the Scheduled Tribes Orders after the last census and upto 31st May, 2012, the population of the Scheduled Castes or the Scheduled Tribes as at the last census is varied in a State, the Census Commissioner shall ascertain or estimate as on the 1st day of March, 2001, the population of the Scheduled Castes or the Scheduled Tribes so varied, and also ascertain or estimate the proportion of such population of the Scheduled Castes or the Scheduled Tribes, respectively, to the total population of the State in the last census.

(3) The population figures ascertained or estimated under sub-section (2) shall be notified by the Census Commissioner in the Gazette of India.

(4) The population figures so notified shall be taken to be the relevant population figures as ascertained or estimated at the last census and shall supersede any figures previously published; and the figures so notified shall be final and shall not be called in question in any court.

Readjustment
of territorial
constituencies
by
Commission.

4. (1) After the population figures have been notified for any State under section 3, the Commission shall make such amendments as may be necessary in the Delimitation Order, having regard to the provisions of articles 81, 170, 330 and 332 of the Constitution, of section 8 of the Delimitation Act, and of this Ordinance, for the purpose of giving proper representation to the Scheduled Castes or, as the case may be, to the Scheduled Tribes of that State, and the First Schedule and the Second Schedule to the Representation of the People Act, 1950 shall be deemed to have been amended accordingly.

43 of 1950.

(2) In making any amendments in the Delimitation Order under sub-section (1), the Commission shall, as far as may be necessary, have regard to the provisions of clauses (c) and (d) of sub-section (1) of section 9 of the Delimitation Act.

(3) The Commission shall—

(a) publish its proposals for the amendments in the Gazette of India and the Official Gazette of the State concerned and also in such other manner as it thinks fit;

(b) specify a date on or after which such proposals will be further considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified and for such consideration hold one or more public sittings at such place or places in each State as it thinks fit; and

(d) thereafter make necessary amendments in the Delimitation Order.

5. (1) In the discharge of its functions under this Ordinance, the Commission shall determine its own procedure and shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

Procedure and powers of Commission.

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the production of any document; and

(c) requisitioning any public record from any court or office.

(2) The Commission shall have the power to require any person to furnish any information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, any matter under the consideration of the Commission.

(3) The Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Explanation.— For the purposes of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Commission shall be the limits of the territory of India.

6. (1) The Commission shall cause the amendments made by it in the Delimitation Order to be published in the Gazette of India and in the Official Gazettes of the States concerned.

Publication of amendments and their dates of operation.

(2) Upon publication in the Gazette of India, every such amendment shall have the force of law and shall not be called in question in any court.

(3) As soon as may be after such publication in the Gazette of India, every such amendment shall be laid before the House of the People and the Legislative Assembly of the State concerned.

(4) Subject to the provisions of sub-section (5), the readjustment of seats and territorial constituencies in the House of the People or in the Legislative Assembly of a State necessitated by any amendments made by the Commission in the Delimitation Order and provided for in that Order as so amended shall apply in relation to every election to the House or, as the case may be, to the Assembly, held after the publication of such amendments in the Gazette of India and shall so apply in supersession of the provisions relating to representation contained in the Representation of the People Act, 1950.

43 of 1950.

(5) Nothing contained in the foregoing sub-sections shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the House or of the Assembly, as the case may be, existing on the date of publication of the amendments made by the Commission in the Gazette of India.

7. (1) The Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned,—

Certain other powers of Commission.

(a) correct any printing mistake in the Delimitation Order as amended under this Ordinance, or any error occurring therein from any inadvertent slip or omission; and

(b) where the boundaries or the name of any district or any territorial division mentioned in the said Order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the Order up-to-date.

(2) Every notification under this section shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned.

8. All things done, and all steps taken, before the commencement of this Ordinance by the Census Commissioner for the ascertainment or estimation of population of the Scheduled Castes and the Scheduled Tribes, or by the Commission for the purpose of readjustment of seats and territorial constituencies shall, insofar as they are in conformity with the provisions of this Ordinance, be deemed to have been done or taken under these provisions as if such provisions were in force at the time such things were done or such steps were taken.

Validation of acts done previous to the commencement of Ordinance.

Power to
remove
difficulties.

9. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of Parliament.

Sd/-

Pranab Mukherjee
President.

P. K. Malhotra
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. Gothi,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 20th February, 2013.

No. RPB/3-2013/Ord.-03-2013-E :- The following Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 3rd February, 2013 is republished for general information :-

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 3rd February, 2013/Magha 14, 1934 (Saka)

THE CRIMINAL LAW (AMENDMENT) ORDINANCE, 2013

No. 3 OF 2013

Promulgated by the President in the Sixty-fourth Year of the Republic of India.

An Ordinance further to amend the India Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

WHEREAS a Bill further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 was introduced in the House of the People and referred to the Department related Parliamentary Standing Committee on Home Affairs for examination and report which is pending;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Criminal Law (Amendment) Ordinance, 2013. Short title and commencement.
- (2) It shall come into force at once.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE

Amendment of
section 100.

2. In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in section 100, in the clause *Secondly*, after the words "grievous hurt", the words "including the offence of grievous hurt punishable under section 326A" shall be inserted. 45 of 1860.

Insertion of new
section 166A.

3. After section 166 of the Penal Code, the following section shall be inserted, namely:—

Public servant
disobeying direction
under law.

"166A. Whoever, being a public servant,—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 and in particular in relation to cognizable offence punishable under section 354, section 354A, section 354B, section 354C, sub-section (2) of section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E, 2 of 1974.

shall be punished with imprisonment for a term which may extend to one year or with fine or with both."

Insertion of new
sections 326A and
326B.

4. After section 326 of the Penal Code, the following sections shall be inserted, namely:—

Voluntarily causing
grievous hurt by
use of acid, etc.

326A. Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life and with fine which may extend to ten lakh rupees:

Provided that any fine imposed under this section shall be given to the person on whom acid was thrown or to whom acid was administered.

326B. Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Voluntarily throwing or attempting to throw acid.

Explanation 1.— For the purposes of section 326A and this section, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.— “Permanent or partial damage” includes deformity, or maiming, or burning, or disfiguring, or disabling any part or parts of the body of a person.

Explanation 3.— For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.

5. In section 354 of the Penal Code, for the words “shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”, the words “shall be punished with imprisonment of either description for a term of one year which may extend to five years and shall also be liable to fine” shall be substituted.

Amendment of section 354.

6. After section 354 of the Penal Code, the following sections shall be inserted, namely:—

Insertion of new sections 354A, 354B, 354C and 354D.
Sexual harassment and punishment for sexual harassment.

‘354A. (1) The following acts or behaviour shall constitute the offence of sexual harassment—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) forcibly showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

(2) Any person who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment which may extend to five years, or with fine, or with both.

(3) Any person who commits the offence specified in clause (iii) or clause (iv) or clause (v) of sub-section (1) shall be punishable with imprisonment of either description that may extend to one year, or with fine, or with both.

Assault or use of
criminal force to
woman with
intent to disrobe.

354B. Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years and with fine.

Voyeurism.

354C. Whoever watches, or captures the image of, a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.— For the purposes of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim's genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.— Where the victim consents to the capture of images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

Stalking.

354D. (1) Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking:

Provided that the course of conduct will not amount to stalking if the person who pursued it shows—

(i) that it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or

(ii) that it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) that in the particular circumstances the pursuit of the course of conduct was reasonable.

(2) Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.

7. For section 370 of the Penal Code, the following sections shall be substituted, namely:—

Substitution of new sections 370 and 370A for section 370. Trafficking of person.

‘370. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.— using threats, or

Secondly.— using force, or any other form of coercion; or

Thirdly.— by abduction, or

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

Explanation 1.— The expression “exploitation” shall include, prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.— The consent of the victim is immaterial in a determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.

(5) Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.

(6) When a public servant including police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life, which shall mean the remainder of that person's natural life.

(7) If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.

Employing of a trafficked person.

370A. (1) Whoever, despite knowing, or having reason to believe that a child has been trafficked, employs such child in any form of labour, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and with fine.

(2) Whoever, despite knowing or having reason to believe that an adult has been trafficked, employs such adult for labour, shall be punished with rigorous imprisonment for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

Substitution of new sections for sections 375, 376, 376A, 376B, 376C and 376D.

8. For sections 375, 376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted, namely:—

Sexual assault.

375. A person is said to commit "sexual assault" if that person—

(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of another person or makes the person to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of another

person or makes the person to do so with him or any other person;
or

(c) manipulates any part of the body of another person so as to cause penetration into the vagina, urethra, anus or any part of body of such person or makes the person to do so with him or any other person; or

(d) applies his mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;

(e) touches the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person,

except where such penetration or touching is carried out for proper hygienic or medical purposes under the circumstances falling under any of the following seven descriptions:—

First.— Against the other person's will.

Secondly. — Without the other person's consent.

Thirdly. — With the other person's consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or of hurt.

Fourthly. — When the person assaulted is a female, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married.

Fifthly.— With the consent of the other person when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by that person personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that action to which such other person gives consent.

Sixthly. — With or without the other person's consent, when such other person is under eighteen years of age.

Seventhly. — When the person is unable to communicate consent.

Explanation 1.— Penetration to any extent is "penetration" for the purposes of this section.

Explanation 2.— For the purposes of this section, "vagina" shall also include *labia majora*.

Explanation 3.— Consent means an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that, a person who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault.

Punishment for sexual assault.

376. (1) Whoever, except in the cases provided for by sub-section (2), commits sexual assault, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits sexual assault —

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a person in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits sexual assault on a person in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces is in the area by virtue of deployment by the Central or a State Government, commits sexual assault; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits sexual assault on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits sexual assault on a person in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards, the person assaulted, commits sexual assault on such person; or

(g) commits sexual assault on a woman knowing her to be pregnant; or

(h) commits sexual assault on a person when such person is under eighteen years of age; or

(i) commits sexual assault, where the person assaulted is incapable of giving consent; or

(j) being in a position of economic or social dominance, commits sexual assault on a person under such dominance; or

(k) commits sexual assault on a person suffering from mental or physical disability; or

(l) while committing sexual assault causes grievous bodily harm or maims or disfigures or endangers the life of a person; or

(m) commits persistent sexual assault,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

Explanation 1.— For the purposes of this sub-section,—

(a) “women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow’s home or an institution called by any other name, which is established and maintained for the reception and care of women or children;

(b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861;

(d) “armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any Act for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government.

Explanation 2.— Where a person is subjected to sexual assault by one or more persons in a group of persons acting in furtherance of their common intention, each of the persons in the group shall be deemed to have committed sexual assault within the meaning of this sub-section.

Punishment for causing death or resulting in persistent vegetative state of the victim.

376A. Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, or with death.

Sexual assault by husband upon his wife during separation.

376B. Whoever commits sexual assault on his own wife, who is living separately under a decree of separation or under any custom or usage, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Sexual intercourse by a person in authority.

376C. Whoever,—

(a) being in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

(d) being on the management of a hospital or being on the staff of a hospital,

and abuses such position or fiduciary relationship to induce or seduce any person either in the first mentioned person's custody or under the first mentioned person's charge or present in the premises and has sexual intercourse with that person, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine.

Explanation 1.— In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (c) of section 375.

Explanation 2.— For the purposes of this section, *Explanations 1 and 2 to section 375* shall also be applicable.

Explanation 3.— "Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.— The expressions “hospital” and “women’s or children’s institution” shall respectively have the same meaning as in Explanation 1 to sub-section (2) of section 376.

376D. Where a person is sexually assaulted by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of sexual assault, regardless of gender and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall pay compensation to the victim which shall be reasonable to meet the medical expenses and rehabilitation of the victim.

Sexual assault by gang.

Explanation.— For the purposes of this section, imprisonment for life shall mean imprisonment for the remainder of that person’s natural life.

376E. Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376C or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life, which shall mean the remainder of that person’s natural life or with death.’

Punishment for repeat offenders.

9. In section 509 of the Penal Code, for the words “shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both”, the words “shall be punished with simple imprisonment for a term which may extend to three years and shall also be liable to fine” shall be substituted.

Amendment of section 509.

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973.

2 of 1974.

10. In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), in section 54A, the following proviso shall be inserted, namely:—

Amendment of section 54A.

“Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that the person is comfortable with:

Provided further, that if the person identifying the person arrested is mentally or physically disabled, the identification process may be videographed.”

Amendment of
section 154

11. In section 154 of the Code of Criminal Procedure, in sub-section (1), the following provisos shall be inserted, namely:—

“Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 375, section 376, section 376A, section 376B, section 376C, section 376D, section 376E and section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, as far as possible, by a woman police officer and such woman shall be provided legal assistance and also the assistance of a healthcare worker or women’s organisation or both:

45 of 1860.

Provided further that—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code is alleged to have been committed or attempted is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person’s choice, in the presence of a special educator or an interpreter, as the case may be;

45 of 1860.

(b) the recording of such information may be videographed.

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.”

Amendment of
section 160.

12. In section 160 of the Code of Criminal Procedure, in sub-section (1), in the proviso, for the words “under the age of fifteen years or woman”, the words “under the age of eighteen years or above the age of sixty-five years or a woman or a physically or mentally disabled person” shall be substituted:

Amendment of
section 161.

13. In section 161 of the Code of Criminal Procedure, in sub-section (3), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 375, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, as far as possible, by a woman police officer.”

45 of 1860.

14. In section 164 of the Code of Criminal Procedure, after sub-section (5), the following sub-section shall be inserted, namely:—

Amendment of section 164.

45 of 1860.

“(5A) (a) In cases punishable under section 354, section 354A, section 354B, sub-section (2) of section 354C, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently physically or mentally disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently physically or mentally disabled, the statement made by the person, with the assistance of an interpreter or special educator, may be videographed;

1 of 1872.

(b) a statement recorded under clause (a) of a person who is temporarily or permanently physically or mentally disabled shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

15. After section 198A of the Code of Criminal Procedure, the following section shall be inserted, namely:—

Insertion of new section 198B.

45 of 1860.

“198B. No Court shall take cognizance of an offence under section 376B of the Indian Penal Code where the persons are in a marital relationship, except upon *prima facie* satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the accused husband.”.

Cognizance of offence.

16. In section 273 of the Code of Criminal Procedure, before the *Explanation*, the following proviso shall be inserted, namely:—

Amendment of section 273.

“Provided that where the evidence of a person below the age of eighteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.”.

17. In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letters “trial of rape or an offence under

Amendment of section 327.

section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code”, the words, figures and letters “trial of sexual assault or an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code” shall be substituted.

Amendment of First Schedule.

18. In the First Schedule to the Code of Criminal Procedure, under the heading “1.-OFFENCES UNDER THE INDIAN PENAL CODE”,—

(a) after the entries relating to section 166, the following entries shall be inserted, namely:—

1	2	3	4	5	6
“166A	Public servant disobeying direction under law	Imprisonment for one year or fine or with both	Non-cognizable	Bailable	Magistrate of the first class”;

(b) after the entries relating to section 326, the following entries shall be inserted, namely:—

1	2	3	4	5	6
“326A	Voluntarily causing grievous hurt by use of acid, etc.	Imprisonment for not less than ten years but which may extend to imprisonment for life and fine of 10 lakh rupees.	Cognizable	Non-bailable	Court of Session.
326B	Voluntarily throwing or attempting to throw acid.	Imprisonment for five years but which may extend to seven years and fine.	Cognizable	Non-bailable	Court of Session.”.

(c) for the entries relating to section 354, the following entries shall be substituted, namely:—

1	2	3	4	5	6
“354	Assault or use of criminal force to woman with intent to outrage her modesty.	Imprisonment of 1 year which may extend to 5 years, and with fine.	Cognizable	Non-bailable	Any Magistrate.

354A	(1) Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours.	Imprisonment which may extend to 5 years or with fine or with both.	Cognizable	Non-bailable	Any Magistrate.
	(2) Sexual harassment of the nature of making sexually coloured remark or showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.	Imprisonment which may extend to 1 year or with fine or with both.	Non-cognizable	Bailable	Any Magistrate.
354B	Assault or use of criminal force to woman with intent to disrobe.	Imprisonment of not less than 3 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Any Magistrate.
354C	Voyeurism.	Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction. Imprisonment of not less than 3 year but which may extend to 7 years and with fine for second or subsequent conviction.	Non-cognizable Cognizable	Bailable Non-bailable	Any Magistrate. Any Magistrate.
354D	Stalking.	Imprisonment of not less than 1 year but which may extend to 3 years and with fine.	Cognizable	Non-bailable	Any Magistrate.

(d) for the entries relating to sections 370, the following entries shall be substituted, namely:—

1	2	3	4	5	6
“370	(1) Trafficking of person.	Imprisonment of not less than 7 years but which may extend to 10 years and with fine.	Cognizable	Non-bailable	Court of Session.
	(2) Trafficking of more than one person.	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.
	(3) Trafficking of a minor.	Imprisonment of not less than 10 years but which may extend to imprisonment for life.	Cognizable	Non-bailable	Court of Session.
	(4) Trafficking of more than one minor.	Imprisonment of not less than 14 years but which may extend to imprisonment for life.	Cognizable	Non-bailable	Court of Session.
	(5) Public servant or a police officer involved in trafficking of minor.	Imprisonment for life which shall mean the remainder of that person's natural life.	Cognizable	Non-bailable	Court of Session.
	(6) Person convicted of offence of trafficking of minor on more than one occasion.	Imprisonment for life which shall mean the remainder of that person's natural life.	Cognizable	Non-bailable	Court of Session.
370A	(1) Employing of a trafficked child.	Imprisonment of not less than 5 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Court of Session.
	(2) Employing of a trafficked adult person.	Imprisonment of not less than 3 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Court of Session.”

(e) for the entries relating to sections 376, 376A, 376B, 376C and 376D, the following entries shall be substituted, namely:—

1	2	3	4	5	6
376	(1) Sexual assault.	Rigorous imprisonment of not less than 7 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.
	(2) Sexual assault by a police officer or a public servant or Member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and sexual assault committed by a person in a position of trust or authority towards the person assaulted or	Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.

	by a near relative of the person assaulted.				
376A	Person committing an offence of sexual assault and inflicting injury which causes death or causes the person to be in a persistent vegetative state.	Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session.
376B	Sexual assault by the husband upon his wife during separation.	Imprisonment for not less than 2 years but which may extend to 7 years and with fine.	Cognizable (but only on the complaint of the victim)	Non-bailable	Court of Session.
376C	Sexual intercourse by a person in authority.	Rigorous imprisonment for not less than 5 years but which may extend to 10 years and with fine.	Cognizable	Non-bailable	Court of Session.
376D	Sexual assault by gang.	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life and compensation to the victim.	Cognizable	Non-bailable	Court of Session.

376E	Repeat offenders.	Imprisonment for life which shall mean the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session."
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(f) entry relating to section 509, in column 3, for the words "Simple imprisonment for one year, or fine, or both," the words "Simple imprisonment for 3 years and with fine" shall be substituted.

CHAPTER IV

AMENDMENTS TO THE INDIAN EVIDENCE ACT, 1872

1 of 1872.

19. After section 53 of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), the following section shall be inserted, namely:—

Insertion of new section 53A.

45 of 1860.

"53A. In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent."

Evidence of character or previous sexual experience not relevant in certain cases.

20. For section 114A of the Evidence Act, the following section shall be substituted, namely:—

Substitution of new section for section 114A.

45 of 1860.

"114A. In a prosecution for sexual assault under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l) or clause (m) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the other person alleged to have been sexually assaulted and such other person states in that person's evidence before the court that such person did not consent, the court shall presume that such person did not consent.

Presumption as to absence of consent in certain prosecution for sexual assault.

45 of 1860.

Explanation.— In this section "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (c) of section 375 of the Indian Penal Code."

21. For section 119 of the Evidence Act, the following section shall be substituted, namely:—

Substitution of new section for section 119.

"119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or

Witness unable to communicate verbally.

by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of a special educator or interpreter in recording the statement, and such statement may be videographed.”.

Amendment of
section 146.

22. In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted, namely:—

“Provided that in a prosecution for an offence under sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.”.

45 of 1860.

Sd/-

Pranab Mukherjee
President.

P. K. Malhotra
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,
Secretary to Government.



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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART-- VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat

Legislative And Parliamentary Affairs Department

Sachivalaya, Gandhinagar,

Dated the 5th June, 2013.

No. RPB/4-2013/Ordi.-04-2013/E:- The following Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 21st May, 2013 is republished for general information :-

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 21st May, 2013/Vaisakha 31, 1935 (Saka)

THE INDIAN MEDICAL COUNCIL (AMENDMENT) ORDINANCE, 2013.

No: 4 OF 2013

Promulgated by the President in the Sixty-fourth Year of the Republic of India.

An Ordinance further to amend the Indian Medical Council Act, 1956.

WHEREAS the Indian Medical Council (Amendment) Bill, 2013 further to amend the Indian Medical Council Act, 1956 was introduced in the Council of States on the 19th day of March, 2013 and is pending in that House;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Indian Medical Council (Amendment) Ordinance, 2013.

Short title and commencement.

(2) It shall be deemed to have come into force on the 15th day of May, 2013.

2. In the Indian Medical Council Act, 1956 (hereinafter referred to as the principal Act), for the long title, the following long title shall be substituted, namely:—

Amendment of long title.

“An Act to provide for the constitution of the Medical Council of India and for the determination, co-ordination, maintenance and regulation of standards of medical

education, the practice of medicine, maintenance of Indian Medical Register and to make endeavour in making available doctors in all States and for matters connected therewith or incidental thereto."

Amendment
of section 3.

3. In section 3 of the principal Act,—

(a) in sub-section (1),—

(i) after clause (a), the following clause shall be inserted, namely:—

"(aa) one member, to represent the Union territories by rotation to be nominated by the Central Government;";

(ii) in clause (b), the following provisos shall be inserted, namely:—

"Provided that where there is a Health University in a State, that University shall elect, in such manner as may be provided by the rules made by the Central Government, one representative for every ten medical colleges affiliated to it to represent such medical colleges:

Provided further that a Health University with less than ten medical colleges affiliated to it, shall also be eligible to elect one representative to represent such medical colleges:

Provided also that such number of representatives shall be reviewed by the Central Government after every four years;";

(iii) clause (d) shall be omitted;

(b) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that no person shall hold office as the President or, as the case may be, the Vice-President for more than two terms."

4. After section 3A of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
3AA.

Reconstitution
of Council.

"3AA. The Central Government shall, after the commencement of the Indian Medical Council (Amendment) Ordinance, 2013, reconstitute the Council, by notification in the Official Gazette, and publish the names of the members nominated or elected to the Council under sub-section (1) of section 3 within a period not exceeding one hundred and eighty days:

Provided that the Board of Governors constituted under sub-section (4) of section 3A shall continue to exercise the powers and perform the functions of the Council till the new Council is reconstituted or for such period not exceeding one hundred and eighty days, whichever is earlier."

Amendment
of section 4.

5. In section 4 of the principal Act, in sub-section (1),—

(a) the words, brackets and letter "or clause (d)" shall be omitted;

(b) the words, brackets, letter and figures "and any rules so made may provide that pending the preparation of the Indian Medical Register in accordance with the provisions of this Act, the members referred in clause (d) of sub-section (1) of section 3 may be nominated by the Central Government instead of elected as provided therein." shall be omitted.

Amendment
of section 7.

6. In section (7) of the principal Act,—

(a) in sub-section (1), for the words "five years", the words "four years" shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Subject to the provisions of the Act, a member, whether nominated or elected, shall hold office for a term of four years."

(c) in sub-section (6), for the words "five years", the words "four years" shall be substituted.

7. After section 9 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
9A.

"9A. (1) The Council shall, subject to the provisions of the Act and rules made thereunder, take measures to determine, coordinate and maintain the standards of medical education and practice in medicine; the Indian Medical Register and make endeavour in making available doctors in all States.

Functions of
Council.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1), may, *inter alia*, provide for all or any of the following matters, namely:—

(a) lay down the standards of professional ethics in the practice of medicine;

(b) grant or withdraw permission for establishment of medical college and course of study in medical education and ensure compliance of its terms and conditions for such permission;

(c) maintain the Indian Medical Register;

(d) render advice to the Central Government or the State Government on matters relating to the medical education and practice in medicine;

(e) facilitate medical education in the institutions situated outside the country;

(f) undertake and recommend to the Central Government or the State Government such measures as may be necessary to regulate medical education in or outside the country;

(g) organise seminars, symposiums and workshops in order to promote continuous medical education and practice in medicine; and

(h) perform such other functions as may be laid down in the rules made by the Central Government."

8. In section 13 of the principal Act,—

Amendment
of section
13.

(a) in sub-sections (2) and (3), for the words "a citizen of India", the words "a citizen of India or an overseas citizen of India" shall respectively be substituted;

(b) in sub-section (4A), for the words "a citizen of India", the words "a citizen of India or an overseas citizen of India" shall be substituted;

(c) after sub-section (5), the following Explanation shall be inserted, namely:—

'Explanation.—For the purposes of this section, the expression "overseas citizen of India" shall have the meaning assigned to it in clause (ee) of sub-section (1) of section 2 of the Citizenship Act, 1955.'

57 of 1955

9. In section 14 of the principal Act, in the proviso to sub-section (1), the words "for the time being for the purposes of teaching, research or charitable work" shall be omitted.

Amendment
of section
14.

10. In section 21 of the principal Act,—

Amendment
of section 21

(a) in sub-section (1), for the words "the names", the words "the names and biometric details" shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

'(2A) The Council shall, in addition to the Indian Medical Register referred to in sub-section (1), maintain the Medical Register in electronic form containing the particulars included in the Indian Medical Register.

Explanation.—For the purpose of this sub-section, the expression, "electronic form" shall have the meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000.

21 of 2000.

Insertion of new section 30A.

Resignation, removal and suspension of President, Vice-President or members of Council.

11. After section 30 of the principal Act, the following section shall be inserted, namely:—

"30A. (1) The President, Vice-President or any member of the Council may, by notice in writing under his hand addressed to the Central Government, resign from his office;

Provided that the President, Vice-President or any member of the Council shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of a period of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may remove from office the President, Vice-President, or any member of the Council, who—

(a) has been adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as such President, Vice-President, or other member; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been convicted of an offence involving moral turpitude; or

(e) has acquired such financial or any other interest in any medical institution falling within the purview of the Council, which is likely to affect prejudicially the exercise of his functions as the President, the Vice-President, or a member; or

(f) is unable to perform or has made persistent defaults—

(i) in the performance of the duties imposed on him under this Act or has exceeded or abused his position; or

(ii) either wilfully or without sufficient cause neglects to comply with the directions issued by the Central Government under sections 33A and 33B;

(g) has been guilty of proved misbehaviour or his continuance in office would be detrimental in public interest;

(3) No person shall be removed from his office on the grounds specified in clause (e) or clause (f) or clause (g) of sub-section (2), unless he has been given a reasonable opportunity of being heard in the matter."

Amendment of section 32.

12. In section 32 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) In particular, and without prejudice to the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of electing the representative of the medical colleges under the first proviso to clause (b) of sub-section (1) of section 3;

(b) the manner of election of the Council under sub-section (1) of section 4;

(c) such other functions of the Council under clause (h) sub-section (2) of section 9A as may be laid down by the Central Government;

(d) the conditions, the manner and payment of fees for filing an appeal before the Central Government under sub-section (2) of section 24;

(e) any other matter which is required to be, or may be, provided by rules or in respect of which provision is to be made by rules.”

13. After section 33 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 33A, 33B and 33C.

“33A. (1) Without prejudice to the foregoing provisions of this Act, the Council shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

Power of Central Government to give directions.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

33B. (1) Where the Central Government considers it expedient so to do, it may, by order in writing, direct the Council to make any regulation or to amend or revoke any regulations already made by it, within such period as the Central Government may specify in this behalf.

Powers of Central Government to direct regulations to be made or to make or amend regulations.

(2) If the Council fails or neglects to comply with such order within the specified period, the Central Government may make the regulations or amend or revoke the regulations made by the Council, as the case may be, in such manner as the Central Government thinks fit.

33C. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or both Houses agree that the rule and regulation should not be made, the rule and regulation shall, thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”

Laying of rules and regulations.

Sd/-

Pranab Mukherjee
President

P. K. Malhotra
Secretary to the Government of India

By order and in the name of the Governor of Gujarat,

C. J. Gothi
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 5th July, 2013..

No. RPB/6-2013/Ord.-06-2013/E:- The following Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section I, dated the 5th June, 2013 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 5th June, 2013, Jyaishta 15, 1935 (Saka)

**THE READJUSTMENT OF REPRESENTATION OF SCHEDULED
CASTES AND SCHEDULED TRIBES IN PARLIAMENTARY AND
ASSEMBLY CONSTITUENCIES (SECOND) ORDINANCE, 2013**

No. 6 OF 2013

Promulgated by the President in the Sixty-fourth Year of the Republic of India.

An Ordinance to provide for the readjustment of seats in the House of the People and in the Legislative Assemblies of the States and for the readjustment of territorial constituencies therefor, insofar as such readjustment is necessitated by inclusion in or exclusion from the lists of the Scheduled Castes and the Scheduled Tribes and for matters connected therewith or incidental thereto.

WHEREAS the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Ordinance, 2013, to provide for the aforesaid matters, was promulgated by the President on the 30th January, 2013;

AND WHEREAS the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Bill, 2013 was introduced in the Council of States to replace the said Ordinance;

AND WHEREAS the said Bill was referred by the Chairman of the Council of States to the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 18th March, 2013;

AND WHEREAS the said Standing Committee presented its Fifty-ninth Report to the Council of States on the 2nd May, 2013 recommending that the Bill be passed;

AND WHEREAS the said Ordinance has lapsed;

AND WHEREAS the said Bill could not be passed by the Council of the States;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to validate the action taken under the said Ordinance so lapsed and to take further action to provide for the aforesaid matters;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and
commencement.

1. (1) This Ordinance may be called the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Ordinance, 2013.

(2) It shall be deemed to have come into force on the 30th day of January, 2013.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) "Census Commissioner" means the Census Commissioner appointed under sub-section (1) of section 4 of the Census Act, 1948;

37 of 1948.

(b) "Commission" means the Election Commission referred to in article 324 of the Constitution;

(c) "Delimitation Act" means the Delimitation Act, 2002;

33 of 2002.

(d) "Delimitation Order" means the Delimitation of Parliamentary and Assembly Constituencies Order, 2008;

(e) "last census" means the census held in India in 2001;

(f) "Scheduled Castes Orders" means the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Castes) (Union Territories) Order, 1951, the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 and the Constitution (Puducherry) Scheduled Castes Order, 1964, made by the President under article 341 of the Constitution;

(g) "Scheduled Tribes Orders" means the Constitution (Scheduled Tribes) Order, 1950, the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 and the Constitution (Sikkim) Scheduled Tribes Order, 1978, made by the President under article 342 of the Constitution;

(h) "State" includes a Union territory having a Legislative Assembly but does not include the State of Jammu and Kashmir.

Estimation of
population of
Scheduled
Castes and
Scheduled
Tribes.

3. (1) As soon as may be after the commencement of this Ordinance, the population as at the last census, of the Scheduled Castes or, as the case may be, of the Scheduled Tribes, in each State shall be ascertained or estimated by the Census Commissioner.

(2) Where by reason of the amendments made in the Scheduled Castes Orders and the Scheduled Tribes Orders after the last census and upto 31st May, 2012, the population of the Scheduled Castes or the Scheduled Tribes as at the last census is varied in a State, the Census Commissioner shall ascertain or estimate as on the 1st day of March, 2001, the population of the Scheduled Castes or the Scheduled Tribes so varied, and also ascertain or estimate the proportion of such population of the Scheduled Castes or the Scheduled Tribes, respectively, to the total population of the State in the last census.

(3) The population figures ascertained or estimated under sub-section (2) shall be notified by the Census Commissioner in the Gazette of India.

(4) The population figures so notified shall be taken to be the relevant population figures as ascertained or estimated at the last census and shall supersede any figures

previously published; and the figures so notified shall be final and shall not be called in question in any court.

43 of 1950.

4. (1) After the population figures have been notified for any State under section 3, the Commission shall make such amendments as may be necessary in the Delimitation Order, having regard to the provisions of articles 81, 170, 330 and 332 of the Constitution, of section 8 of the Delimitation Act, and of this Ordinance, for the purpose of giving proper representation to the Scheduled Castes or, as the case may be, to the Scheduled Tribes of that State, and the First Schedule and the Second Schedule to the Representation of the People Act, 1950 shall be deemed to have been amended accordingly.

Readjustment
of territorial
constituencies
by
Commission.

(2) In making any amendments in the Delimitation Order under sub-section (1), the Commission shall, as far as may be necessary, have regard to the provisions of clauses (c) and (d) of sub-section (1) of section 9 of the Delimitation Act.

(3) The Commission shall—

(a) publish its proposals for the amendments in the Gazette of India and the Official Gazette of the State concerned and also in such other manner as it thinks fit;

(b) specify a date on or after which such proposals will be further considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified and for such consideration hold one or more public sittings at such place or places in each State as it thinks fit; and

(d) thereafter make necessary amendments in the Delimitation Order.

5 of 1908.

5. (1) In the discharge of its functions under this Ordinance, the Commission shall determine its own procedure and shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

Procedure and
powers of
Commission.

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the production of any document; and

(c) requisitioning any public record from any court or office.

(2) The Commission shall have the power to require any person to furnish any information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, any matter under the consideration of the Commission.

2 of 1974.

(3) The Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Explanation.—For the purposes of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Commission shall be the limits of the territory of India.

6. (1) The Commission shall cause the amendments made by it in the Delimitation Order to be published in the Gazette of India and in the Official Gazettes of the States concerned.

Publication of
amendments
and their
dates of
operation.

(2) Upon publication in the Gazette of India, every such amendment shall have the force of law and shall not be called in question in any court.

(3) As soon as may be after such publication in the Gazette of India, every such amendment shall be laid before the House of the People and the Legislative Assembly of the State concerned.

(4) Subject to the provisions of sub-section (5), the readjustment of seats and territorial constituencies in the House of the People or in the Legislative Assembly of a State necessitated by any amendments made by the Commission in the Delimitation Order and provided for in that Order as so amended shall apply in relation to every election to the House or, as the case may be, to the Assembly, held after the publication of such amendments in the

Gazette of India and shall so apply in supersession of the provisions relating to representation contained in the Representation of the People Act, 1950.

43 of 1950.

(5) Nothing contained in the foregoing sub-sections shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the House or of the Assembly, as the case may be, existing on the date of publication of the amendments made by the Commission in the Gazette of India.

Certain other powers of Commission.

7. (1) The Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned,—

(a) correct any printing mistake in the Delimitation Order as amended under this Ordinance, or any error occurring therein from any inadvertent slip or omission; and

(b) where the boundaries or the name of any district or any territorial division mentioned in the said Order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the Order up-to-date.

(2) Every notification under this section shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned.

Validation of acts done previous to the commencement of Ordinance.

8. All things done, and all steps taken, before the commencement of this Ordinance by the Census Commissioner for the ascertainment or estimation of population of the Scheduled Castes and the Scheduled Tribes, or by the Commission for the purpose of readjustment of seats and territorial constituencies shall, insofar as they are in conformity with the provisions of this Ordinance, be deemed to have been done or taken under these provisions as if such provisions were in force at the time such things were done or such steps were taken.

Power to remove difficulties.

9. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of Parliament.

Validation of action taken under the lapsed Ordinance 2 of 2013.

10. Notwithstanding the lapse of the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Ordinance, 2013, anything done or any action taken under the said Ordinance so lapsed shall always be deemed to have been done or taken under the corresponding provisions of this Ordinance as if such provisions had been in force at all material time.

Sd/-

Pranab Mukherjee,

President

Sd/-

N. L. Meena,

Additional Secy. to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,

Secretary to Government.



सत्यमेव जयते



The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

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THURSDAY, JULY 18, 2013/ASADHA 27, 1935

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat

Legislative And Parliamentary Affairs Department

Sachivalaya, Gandhinagar,

Dated the 16th July, 2013.

No. RPB/25-2013/Act-38-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

Ministry of Law and Justice

Legislative Department

New Delhi, the 14th September, 2012, Bhadra 23, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 13th September, 2012 is hereby published for general information:-

THE NATIONAL INSTITUTE OF MENTAL HEALTH AND NEURO-SCIENCES, BANGALORE ACT, 2012

AN

ACT

(ACT No. 38 OF 2012)

[13th September, 2012]

to declare the institution known as the National Institute of Mental Health and Neuro-Science, Bangalore; to be an institution of national importance and to provide for its incorporation and for matters connected therewith.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:-

1. (1) This Act may be called the National Institute of Mental Health and Neuro-Sciences, Bangalore Act, 2012. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, be notification in the Official Gazette, appoint.

2. Whereas the objects of the National Institute of Mental Health and Neuro-Sciences, Bangalore are such as to make the institution one of national importance, it is hereby declared that the National Institute of Mental Health and Neuro-Sciences, Bangalore is an institution of national importance.

Declaration of National Institute of Mental Health and Neuro-Sciences, Bangalore, as an institution of national importance.

Definitions.

3. In this Act, unless the context otherwise requires,—

- (a) "Fund" means the Fund of the Institute referred to in section 17;
- (b) "Governing Body" means the Governing Body of the Institute;
- (c) "Institute" means the institution known as the National Institute of Mental Health and Neuro-Sciences, Bangalore, incorporated under this Act;
- (d) "member" means a member of the Institute;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "specified" means specified by regulations made under this Act.

Incorporation of Institute.

4. The National Institute of Mental Health and Neuro-Sciences, Bangalore, an Institute registered under the Karnataka Societies Registration Act, 1960 on the 27th day of December, 1974, is hereby constituted a body corporate by the name aforesaid and as such body corporate, it shall have perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract and shall, by that name, sue and be sued.

Karnataka Act, XVII of 1960.

Composition of Institute.

5. (1) The Institute shall consist of the following members, namely:—

- (a) the Minister of Health and Family Welfare, *ex officio*;
- (b) the Minister of Health and Family Welfare (Medical Education), Government of Karnataka, *ex officio*;
- (c) Secretary to the Government of India in the Ministry or Department of Health and Family Welfare, *ex officio*;
- (d) the Director of the Institute, *ex officio*;
- (e) Secretary to the Government of India or his nominee (not below the rank of Joint Secretary) Ministry of Finance, Department of Expenditure, *ex officio*;
- (f) Secretary to the Government of India or his nominee (not below the rank of Joint Secretary) in the Department of Higher Education, Ministry of Human Resource Development, *ex officio*;
- (g) the Director-General of Health Services, Government of India, *ex officio*;
- (h) the Vice-Chancellor of Rajiv Gandhi University of Health Sciences, Karnataka, *ex officio*;
- (i) the Chief Secretary to the Government of Karnataka or his nominee who shall not be below the rank of Secretary to that Government;
- (j) seven persons of whom one shall be a non-medical scientist representing the Indian Sciences Congress Association, and, one each from biological; behavioural and physical sciences, of repute, from any University to be nominated by the Central Government in such manner as may be prescribed;
- (k) four representatives of medical faculties of Indian Universities, of whom one shall be from the National Institute of Mental Health and Neuro-Sciences, to be nominated by the Central Government in such manner as may be prescribed;
- (l) three Members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Council of States.

(2) It is hereby declared that the office of member of the Institute shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

Term of office of and vacancies among members.

6. (1) Save as otherwise provided in this section, the term of office of a member shall be five years from the date of his nomination or election.

(2) The term of office of a member elected under clause (l) of sub-section (1) of section 5 shall come to an end as soon as he becomes a Minister or Minister of State or Deputy Minister or the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or ceases to be a member of the House from which he was elected.

(3) The term of office of an *ex officio* member shall continue so long as he holds the office by virtue of which he is such a member.

(4) The term of office of a member nominated or elected to fill a casual vacancy shall continue for the remainder of the term of the member in whose place he is nominated or elected.

(5) An outgoing member other than a member elected under clause (1) of sub-section (1) of section 5 shall continue in office until another person is nominated as a member in his place or for a period of three months, whichever is earlier:

Provided that the Central Government shall nominate a member in place of an outgoing member within the said period of three months.

(6) An outgoing member shall be eligible for re-nomination or re-election.

(7) A member may resign his office by writing under his hand addressed to the Central Government but he shall continue in office until his resignation is accepted by that Government.

(8) The manner of filling vacancies among members shall be such as may be prescribed.

7. (1) There shall be a President of the Institute who shall be nominated by the Central Government from amongst the members other than the Director of the Institute.

Powers and functions of President.

(2) The President shall exercise such powers and discharge such functions as are laid down in this Act or as may be prescribed.

8. There shall be a Vice-President of the Institute who shall be nominated by the Central Government from amongst the members other than the Director of the Institute.

Vice-President of Institute.

9. The President, Vice-President and other members shall receive such allowances from the Institute as may be prescribed.

Allowances of President, Vice-President and other members. Meetings of Institute.

10. The Institute shall hold its first meeting at such time and place as may be appointed by the Central Government and shall observe such rules of procedure in regard to the transaction of business at the first meeting as may be laid down by that Government, and thereafter, the Institute shall meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings as may be specified.

11. (1) There shall be a Governing Body of the Institute which shall be constituted by the Institute in such manner as may be specified :

Governing Body and other committees of Institute.

Provided that the number of persons who are not members of the Institute shall not exceed one-third of the total membership of the Governing Body.

(2) The Governing Body shall be the executive committee of the Institute and shall exercise such powers and discharge such functions as the Institute may specify in this behalf.

(3) The President of the Institute shall be the Chairperson of the Governing Body and as Chairperson thereof he shall exercise such powers and discharge such functions as may be specified.

(4) The procedure to be followed in the exercise of its powers and discharge of its functions by the Governing Body, and the term of office of, and the manner of filling vacancies among the members of the Governing Body shall be such as may be specified.

(5) Subject to such control and restrictions as may be prescribed, the Institute may constitute as many standing committees and as many *ad hoc* committees as it thinks fit for exercising any power or discharging any function of the Institute or for inquiring into, or reporting or advising upon, any matter which the Institute may refer to them.

(6) The Chairperson and members of the Governing Body and the Chairperson and the members of a standing committee or an *ad hoc* committee shall receive such allowances, as may be specified.

Staff of
Institute.

12. (1) There shall be a chief executive officer of the Institute who shall be designated as the Director of the Institute and shall, subject to such rules as may be prescribed, be appointed by the Institute:

Provided that the first Director of the Institute shall be appointed by the Central Government.

(2) The Director shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(3) The Director shall act as the Secretary to the Institute as well as the Governing Body.

(4) The Director shall exercise such powers and discharge such functions as may be specified or as may be delegated to him by the Institute or the President of the Institute or the Governing Body or the Chairperson of the Governing Body.

(5) Subject to such rules as may be prescribed, the Institute may appoint such number of other officers and employees as may be necessary for the exercise of its powers and discharge of its functions and the designations and grades of other officers and employees shall be such as may be specified.

(6) Subject to such rules as may be prescribed, the Director and other officers and employees of the Institute shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, provident fund and other matters as may be specified.

Objects of
Institute.

13. The objects of the Institute shall be—

(a) to develop patterns of teaching in undergraduate and postgraduate medical education in all its branches with a focus on mental health, neuro-sciences and allied specialties so as to demonstrate a high standard of medical education;

(b) to bring together, as far as may be, in one place educational facilities of the highest order for the training of personnel in all important branches of health activity;

(c) to attain self-sufficiency in postgraduate medical education to meet the country's needs for specialists and medical teachers, particularly in the field of mental health, neuro-sciences and allied specialties;

(d) to evolve innovative strategies to offer diagnostic and comprehensive therapeutic service facilities in the field of mental health and neuro-sciences, utilising the advances in information technology;

(e) to make an in-depth study and research in the field of mental health, neuro-sciences and allied specialties.

Functions of
Institute.

14. With a view to the promotion of the objects specified in section 13, the Institute may—

(a) provide for undergraduate and postgraduate teaching in the science of modern medicine and other allied sciences including physical and biological sciences;

(b) provide facilities for research in the various branches of such sciences;

(c) provide for the teaching of humanities;

(d) conduct experiments in new methods of medical education, both undergraduate and postgraduate, in order to arrive at high standard of such education;

(e) specify courses and curricula for both undergraduate and postgraduate studies;

(f) notwithstanding anything contained in any other law for the time being in force, establish and maintain,—

(i) one or more medical institutions with different departments staffed and equipped to undertake education and conduct research in different subjects,

(ii) one or more well equipped hospitals to provide clinical services,

(iii) nursing colleges staffed and equipped for the training of nurses,

(iv) rural and urban health centres which will form centres for the field training of the medical and nursing students of the Institute, and

(v) other institutions for the training of different types of health workers such as physiotherapists, occupational therapists and medical technicians of various kinds;

(g) trained teachers from different medical colleges in India;

(h) hold examinations and grant such degrees, diplomas and other academic distinctions and titles in undergraduate and postgraduate medical, nursing and allied specialities education as may be laid down in the regulations;

(i) induct and appoint persons as professors, readers, lecturers and in posts of other description in accordance with regulations;

(j) receive grants from the Government and gifts, donations, benefactions, bequests and transfers of properties, both movable and immovable, from donors, benefactors, testators or transferors, as the case may be;

(k) deal with any property belonging to, or vested in, the Institute in any manner which is considered necessary for promoting the objects specified in section 12;

(l) demand and receive with the prior approval of the Central Government such fees and other charges as may be specified;

(m) construct quarters for its staff and allot such quarters to the staff in accordance with such regulations as may be made in this behalf;

(n) borrow money, with the prior approval of the Central Government, on the security of the property of the Institute;

(o) do all such other acts and things as may be necessary in furtherance of the objects specified in section 13.

Karnataka
Act XVII
of 1960.

15. (1) The properties of the National Institute of Mental Health and Neuro-Sciences, Bangalore, registered under the Karnataka Societies Registration Act, 1960 shall, on the date of commencement of this Act, vest in the Institute.

Vesting of
property.

(2) All income and property of the Institute shall be applied towards the promotion of the objects thereof as set forth in this Act.

(3) No portion of the income and property of the Institute shall be paid or transferred, directly or indirectly, by way of profit to the persons, who at any time, or have been members of the Institute:

Provided that nothing herein contained shall prevent the payment of remuneration and other allowances to any member thereof or other persons for the services rendered to the Institute.

16. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Institute in each financial year such sums of money and in such manner as may be considered necessary for the exercise of its powers and discharge of its functions under this Act.

Payment to
Institute.

17. (1) The Institute shall maintain a Fund to which shall be credited—

Fund of
Institute.

(a) all moneys provided by the Central Government and the State Government of Karnataka;

(b) all fees and other charges received by the Institute;

(c) all moneys received by the Institute by way of grants, gifts, donations, benefactions, bequests or transfers; and

(d) all moneys received by the Institute in any other manner or from any other source.

(2) All moneys credited to the Fund shall be deposited in such banks or invested in such manner as the Institute may, with the approval of the Central Government, decide.

(3) The Fund shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its functions under section 14.

Budget of
Institute.

18. The Institute shall prepare in such form and at such time every year a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure of the Institute and shall forward to the Central Government such number of copies thereof as may be prescribed.

Accounts and
audit.

19. (1) The Institute shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance-sheet in such form as the Central Government may prescribe, and in accordance with such general directions as may be issued by that Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Institute shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Institute to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Institute shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Institute as well as of the institutions established and maintained by it.

(4) The accounts of the Institute as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before both the Houses of Parliament.

Annual report.

20. The Institute shall prepare for every year a report of its activities during that year and submit the report to the Central Government in such form and on or before such date as may be prescribed and a copy of this report shall be laid before both Houses of Parliament within one month of its receipt.

Pension and
provident
funds.

21. (1) The Institute shall constitute for the benefit of its officers, teachers and other employees in such manner and subject to such conditions as may be specified such pension and provident funds as it may deem fit.

(2) Where any such pension or provident fund has been constituted, the Central Government may declare that the provisions of the Provident Funds Act, 1925 shall apply to, 19 of 1925. such fund as if it were a Government Provident Fund.

Authentication
of orders and
instruments of
Institute.

22. All orders and decisions of the Institute shall be authenticated by the Director or any other member authorised by the Institute in this behalf and all other instruments shall be authenticated by the signature of the Director or such officers as may be authorised by the Institute.

Acts and
proceedings
not to be
invalidated by
vacancies, etc.

23. No act done or proceeding taken by the Institute, Governing Body or any standing or *ad hoc* committee under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of the Institute, Governing Body or such standing or *ad hoc* committee.

Grant of
medical
degrees,
diplomas, etc.,
by Institute.

24. Notwithstanding anything contained in any other law for the time being in force, the Institute shall have the power to grant medical and nursing degrees, diplomas, certificates and other academic distinctions and titles under this Act.

102 of 1956.
34 of 1992.
48 of 1947.
3 of 1956.

25. Notwithstanding anything contained in the Indian Medical Council Act, 1956, the Rehabilitation Council of India Act, 1992, the Indian Nursing Council Act, 1947 and the University Grants Commission Act, 1956, the medical degrees, diplomas, nursing degrees and certificates granted by the Institute under this Act shall be recognised medical qualifications for the purposes of the Acts aforesaid and shall be deemed to be included in the Schedule to the respective Acts.

Recognition of medical qualifications granted by Institute.

26. The Institute shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

Control by Central Government.

27. If in, or in connection with, the exercise of its powers and discharge of its functions by the Institute under this Act, any dispute or difference arises between the Institute and the Central Government, the decision of the Central Government thereon shall be final.

Resolution of differences.

28. The Institute shall furnish to the Central Government such reports, returns and other information as that Government may require from time to time.

Returns and information.

29. Subject to the provisions of this Act, every person who is employed in the National Institute of Mental Health and Neuro-Sciences, Bangalore, immediately before the commencement of this Act, shall, on and from such commencement, become an employee of the Institute and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of commencement of this Act if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by regulations:

Transfer of service of existing employees.

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government.

30. (1) The Central Government may in consultation with the Institute by notification in the Official Gazette, make rules to carry out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of nomination of members under clauses (j) and (k) of sub-section (1) of section 5;

(b) the manner of filling vacancies of members under sub-section (8) of section 6;

(c) the powers and functions to be exercised and discharged by the President of the Institute under sub-section (2) of section 7;

(d) the allowances to be paid to the President and other members of the Institute under section 9;

(e) the control and restrictions in relation to the constitution of standing and *ad hoc* committees under sub-section (5) of section 11;

(f) appointment of Director and other officers and employees and salaries and allowances and other conditions of service of the Director and other officers and employees of the Institute under section 12;

(g) the form in which, and the time at which, the budgets and reports shall be prepared by the Institute under section 18;

(h) the form of annual statement of accounts including balance-sheet under sub-section (1) of section 19;

(i) the form of annual report under section 20;

Power to
make
regulations.

(j) any other matter which has to be or may be prescribed by rules.

31. (1) The Institute with the previous approval of the Central Government, may by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for—

(a) the summoning and holding of meetings, other than the first meeting, of the Institute, the time and place where such meetings are to be held and the conduct of business at such meetings under section 10;

(b) the manner of constituting the Governing Body and standing and *ad hoc* committees, the term of office of, and the manner of filling vacancies therein, the allowances to be paid to the members and the procedure to be followed by the Governing Body; standing and *ad hoc* committees in the conduct of their business, exercise of their power, discharge of their function under section 11;

(c) the powers and duties of the Director of the Institute under sub-section (4), the designations and grades of other officers and employees under sub-section (5) and other conditions of service under sub-section (6) of section 12;

(d) the power of the Institute under section 14, to specify—

(i) courses and curricula for undergraduate and postgraduate studies under clause (e);

(ii) hold examination and grant degrees, diplomas, certificates and other academic distinctions and titles under clause (h);

(iii) the professorships, readerships, lectureships and other posts which may be instituted and persons who may be appointed to such posts under clause (i);

(iv) the management of the properties of the Institute under clauses (k) and (m);

(v) the fees and other charges which may be demanded and received by the Institute, under clause (j);

(e) the manner in which, and the conditions subject to which, pension and provident funds may be constituted for the benefit of officers, teachers and other employees of the Institute under sub-section (1) of section 21;

(f) any other matter for which under this Act provisions may be made by regulations.

(2) Notwithstanding anything contained in sub-section (1), the first regulations under this Act shall be made by the Central Government; and any regulations so made may be altered or rescinded by the Institute in exercise of its powers under sub-section (1).

Laying of
rules and
regulations
before
Parliament.

32. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to
remove
difficulties.

33. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Sd/-

Dr. Brahm Avtar Agrawal,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,
Secretary to Government.

Government Central Press, Gandhinagar.



सत्यमेव जयते

The Gujarat Government Gazette

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat

Legislative And Parliamentary Affairs Department

Sachivalaya, Gandhinagar,

Dated the 26th July, 2013.

No. RPB/7-2013/Ord.-07-2013/E:- The following Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 5th July, 2013 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 5th July, 2013, Asadha 14, 1935 (Sake)

THE NATIONAL FOOD SECURITY ORDINANCE, 2013

NO. 7 OF 2013

Promulgated by the President in the Sixty-fourth Year of the Republic of India.

An Ordinance to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto.

WHEREAS the National Food Security Bill, 2011 was introduced in the House of the People on the 22nd day of December, 2011 and referred to the Department-related Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution which gave its report on the 17th day of January, 2013 but the said Bill has not been passed;

AND WHEREAS in pursuance of the constitutional obligations, it is considered necessary to enact a law providing for food security to the people of the country to live a life with dignity;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

Short title, extent
and
commencement.

1. (1) This Ordinance may be called the National Food Security Ordinance, 2013.

(2) It extends to the whole of India.

(3) Save as otherwise provided, it shall come into force at once.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(1) “*anganwadi*” means a child care and development centre set up under the Integrated Child Development Services Scheme of the Central Government to render services covered under section 4, clause (a) of sub-section (1) of section 5 and section 6;

(2) “central pool” means the stock of foodgrains which is,—

(i) procured by the Central Government and the State Governments through minimum support price operations;

(ii) maintained for allocations under the Targeted Public Distribution System, other welfare schemes, including calamity relief and such other schemes;

(iii) kept as reserves for schemes referred to in sub-clause (ii);

(3) “eligible households” means households covered under the priority households and the Antyodaya Anna Yojana referred to in sub-section (1) of section 3;

(4) “fair price shop” means a shop which has been licensed to distribute essential commodities by an order issued under section 3 of the Essential Commodities Act, 1955, to the ration card holders under the Targeted Public Distribution System; 10 of 1955.

(5) “foodgrains” means rice, wheat or coarse grains or any combination thereof conforming to such quality norms as may be determined, by order, by the Central Government from time to time;

(6) “food security” means the supply of the entitled quantity of foodgrains and meal specified under Chapter II;

(7) “food security allowance” means the amount of money to be paid by the concerned State Government to the entitled persons under section 8;

(8) “local authority” includes Panchayat, municipality, district board, cantonment board, town planning authority and in the States of Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura where Panchayats do not exist, the village council or committee or any other body, by whatever name called, which is authorised under the Constitution or any law for the time being in force for self-governance or any other authority or body vested with the control and management of civic services, within a specified local area;

(9) “meal” means hot cooked meal or ready to eat meal or take

home ration, as may be prescribed by the Central Government;

(10) "minimum support price" means the assured price announced by the Central Government at which foodgrains are procured from farmers by the Central Government and the State Governments and their agencies, for the central pool;

(11) "notification" means a notification issued under this Ordinance and published in the Official Gazette;

(12) "other welfare schemes" means such Government schemes, in addition to the Targeted Public Distribution System, under which foodgrains or meals are supplied as part of the schemes;

(13) "person with disability" means a person defined as such in clause (t) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;

(14) "priority households" means households identified as such under section 10;

(15) "prescribed" means prescribed by rules made under this Ordinance;

(16) "ration card" means a document issued under an order or authority of the State Government for the purchase of essential commodities from the fair price shops under the Targeted Public Distribution System;

(17) "rural area" means any area in a State except those areas covered by any urban local body or a cantonment board established or constituted under any law for the time being in force;

(18) "Schedule" means a Schedule appended to this Ordinance;

(19) "senior citizen" means a person defined as such under clause (h) of section 2 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007;

(20) "social audit" means the process in which people collectively monitor and evaluate the planning and implementation of a programme or scheme;

(21) "State Commission" means the State Food Commission constituted under section 16;

(22) "State Government", in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution;

(23) "Targeted Public Distribution System" means the system for distribution of essential commodities to the ration card holders through fair price shops;

(24) "Vigilance Committee" means a committee constituted under section 29 to supervise the implementation of all schemes under this Ordinance;

(25) the words and expressions not defined here but defined in the Essential Commodities Act, 1955, or any other relevant Act shall have the meaning respectively assigned to them in those Acts.

1 of 1996.

56 of 2007.

10 of 1955.

CHAPTER II

PROVISIONS FOR FOOD SECURITY

Right to receive
foodgrains at
subsidised prices
by persons
belonging to
eligible
households under
Targeted Public
Distribution
System.

3. (1) Every person belonging to priority households, identified under sub-section (1) of section 10, shall be entitled to receive five kilograms of foodgrains per person per month at subsidised prices specified in Schedule I from the State Government under the Targeted Public Distribution System:

Provided that the households covered under Antyodaya Anna Yojana shall, to such extent as may be specified by the Central Government for each State in the said scheme, be entitled to thirty-five kilograms of foodgrains per household per month at the prices specified in Schedule I.

Explanation.—For the purpose of this section, the “Antyodaya Anna Yojana” means, the scheme by the said name launched by the Central Government on the 25th day of December, 2000; and as modified from time to time.

(2) The entitlements of the persons belonging to the eligible households referred to in sub-section (1) at subsidised prices shall extend up to seventy-five per cent. of the rural population and up to fifty per cent. of the urban population.

(3) Subject to sub-section (1), the State Government may provide to the persons belonging to eligible households, wheat flour in lieu of the entitled quantity of foodgrains in accordance with such guidelines as may be specified by the Central Government.

Nutritional
support to
pregnant women
and lactating
mothers,

4. Subject to such schemes as may be framed by the Central Government, every pregnant woman and lactating mother shall be entitled to—

(a) meal, free of charge, during pregnancy and six months after the child birth, through the local *anganwadi*, so as to meet the nutritional standards specified in Schedule II; and

(b) maternity benefit of not less than rupees six thousand, in such instalments as may be prescribed by the Central Government:

Provided that all pregnant women and lactating mothers in regular employment with the Central Government or State Governments or Public Sector Undertakings or those who are in receipt of similar benefits under any law for the time being in force shall not be entitled to benefits specified in clause (b).

Nutritional
support to
children:

5. (1) Subject to the provisions contained in clause (b), every child up to the age of fourteen years shall have the following entitlements for his nutritional needs, namely:—

(a) in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local *anganwadi* so as to meet the nutritional standards specified in Schedule II:

Provided that for children below the age of six months,

exclusive breast feeding shall be promoted;

(b) in the case of children, up to class VIII or within the age group of six to fourteen years, whichever is applicable, one mid-day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, so as to meet the nutritional standards specified in Schedule II.

(2) Every school, referred to in clause (b) of sub-section (1), and *anganwadi* shall have facilities for cooking meals, drinking water and sanitation:

Provided that in urban areas facilities of centralised kitchens for cooking meals may be used, wherever required, as per the guidelines issued by the Central Government.

6. The State Government shall, through the local *anganwadi*, identify and provide meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II.

Prevention and management of child malnutrition.

7. The State Governments shall implement schemes covering entitlements under sections 4, 5 and section 6 in accordance with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the Central Government.

Implementation of schemes for realisation of entitlements.

CHAPTER III.

FOOD SECURITY ALLOWANCE

8. In case of non-supply of the entitled quantities of foodgrains or meals to entitled persons under Chapter II, such persons shall be entitled to receive such food security allowance from the concerned State Government to be paid to each person, within such time and manner as may be prescribed by the Central Government.

Right to receive food security allowance in certain cases.

CHAPTER IV

IDENTIFICATION OF ELIGIBLE HOUSEHOLDS

9. The percentage coverage under the Targeted Public Distribution System in rural and urban areas for each State shall, subject to sub-section (2) of section 3, be determined by the Central Government and the total number of persons to be covered in such rural and urban areas of the State shall be calculated on the basis of the population estimates as per the census of which the relevant figures have been published.

Coverage of population under Targeted Public Distribution System.

10. (1) The State Government shall, within the number of persons determined under section 9 for the rural and urban areas, identify—

State Government to prepare guidelines and to identify priority households.

(a) the households to be covered under the Antyodaya Anna Yojana to the extent specified under sub-section (1) of section 3, in accordance with the guidelines applicable to the said scheme;

(b) the remaining households as priority households to be

covered under the Targeted Public Distribution System, in accordance with such guidelines as the State Government may specify:

Provided that the State Government may, as soon as possible, but within such period not exceeding one hundred and eighty days, after the commencement of the Ordinance, identify the eligible households in accordance with the guidelines framed under this sub-section:

Provided further that the State Government shall continue to receive the allocation of foodgrains from the Central Government under the existing Targeted Public Distribution System, till the identification of such households is complete.

(2) The State Government shall update the list of eligible households, within the number of persons determined under section 9 for the rural and urban areas, in accordance with the guidelines framed under sub-section (1).

Publication and display of list of eligible households.

11. The State Government shall place the list of the identified eligible households in the public domain and display it prominently.

CHAPTER V

REFORMS IN TARGETED PUBLIC DISTRIBUTION SYSTEM

Reforms in Targeted Public Distribution System.

12. (1) The Central and State Governments shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in this Ordinance.

(2) The reforms shall, *inter alia*, include—

(a) doorstep delivery of foodgrains to the Targeted Public Distribution System outlets;

(b) application of information and communication technology tools including end-to-end computerisation in order to ensure transparent recording of transactions at all levels, and to prevent diversion;

(c) leveraging “aadhaar” for unique identification, with biometric information of entitled beneficiaries for proper targeting of benefits under this Ordinance;

(d) full transparency of records;

(e) preference to public institutions or public bodies such as Panchayats, self help groups, co-operatives, in licensing of fair price shops and management of fair price shops by women or their collectives;

(f) diversification of commodities distributed under the Public Distribution System over a period of time;

(g) support to local public distribution models and grains banks;

(h) introducing schemes, such as, cash transfer, food coupons, or other schemes, to the targeted beneficiaries in lieu of their foodgrain entitlements specified in Chapter II, in such area and manner as may be prescribed by the Central Government.

CHAPTER VI

WOMEN EMPOWERMENT

13. (1) The eldest woman who is not less than eighteen years of age, in every eligible household, shall be head of the household for the purpose of issue of ration cards.

Women of eighteen years of age or above to be head of household for purpose of issue of ration cards.

(2) Where a household at any time does not have a woman or a woman of eighteen years of age or above, but has a female member below the age of eighteen years, then, the eldest male member of the household shall be the head of the household for the purpose of issue of ration card and the female member, on attaining the age of eighteen years, shall become the head of the household for such ration cards in place of such male member.

CHAPTER VII

GRIEVANCE REDRESSAL MECHANISM

14. Every State Government shall put in place an internal grievance redressal mechanism which may include call centres, help lines, designation of nodal officers, or such other mechanism as may be prescribed.

Internal grievance redressal mechanism.

15. (1) The State Government shall appoint or designate, for each district, an officer to be the District Grievance Redressal Officer for expeditious and effective redressal of grievances of the aggrieved persons in matters relating to distribution of entitled foodgrains or meals under Chapter II, and to enforce the entitlements under this Ordinance.

District Grievance Redressal Officer.

(2) The qualifications for appointment as District Grievance Redressal Officer and its powers shall be such as may be prescribed by the State Government.

(3) The method and terms and conditions of appointment of the District Grievance Redressal Officer shall be such as may be prescribed by the State Government.

(4) The State Government shall provide for the salary and allowances of the District Grievance Redressal Officer and other staff and such other expenditure as may be considered necessary for their proper functioning.

(5) The officer referred to in sub-section (1) shall hear complaints regarding non-distribution of entitled foodgrains or meals, and matters relating thereto, and take necessary action for their redressal in such manner and within such time as may be prescribed by the State Government.

(6) Any complainant or the officer or authority against whom any order has been passed by officer referred to in sub-section (1), who is not

satisfied with the redressal of grievance may file an appeal against such order before the State Commission.

(7) Every appeal under sub-section (6) shall be filed in such manner and within such time as may be prescribed by the State Government.

State Food
Commission.

16. (1) Every State Government may, by notification, constitute a State Food Commission for the purpose of monitoring and review of implementation of this Ordinance.

(2) The State Commission shall consist of —

(a) a Chairperson;

(b) five other Members; and

(c) a Member-Secretary, who shall be an officer of the State Government not below the rank of Joint Secretary to that Government;

Provided that there shall be at least two women, whether Chairperson, Member or Member-Secretary:

Provided further that there shall be one person belonging to the Scheduled Castes and one person belonging to the Scheduled Tribes, whether Chairperson, Member or Member-Secretary.

(3) The Chairperson and other Members shall be appointed from amongst persons—

(a) who are or have been member of the All India Services or any other civil services of the Union or State or holding a civil post under the Union or State having knowledge and experience in matters relating to food security, policy making and administration in the field of agriculture, civil supplies, nutrition, health or any allied field; or

(b) of eminence in public life with wide knowledge and experience in agriculture, law, human rights, social service, management, nutrition, health, food policy or public administration; or

(c) who have a proven record of work relating to the improvement of the food and nutrition rights of the poor.

(4) The Chairperson and every other Member shall hold office for a term not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that no person shall hold office as the Chairperson or other Member after he has attained the age of sixty-five years.

(5) The method of appointment and other terms and conditions subject to which the Chairperson, other Members and Member-Secretary of the State Commission may be appointed, and time, place and procedure of meetings of the State Commission (including the quorum at such meetings) and its powers, shall be such as may be prescribed by the State Government.

(6) The State Commission shall undertake the following functions, namely:—

(a) monitor and evaluate the implementation of this Ordinance, in relation to the State;

(b) either *suo motu* or on receipt of complaint inquire into violations of entitlements provided under Chapter II;

(c) give advice to the State Government on effective implementation of this Ordinance;

(d) give advice to the State Government, their agencies, autonomous bodies as well as non-governmental organisations involved in delivery of relevant services, for the effective implementation of food and nutrition related schemes, to enable individuals to fully access their entitlements specified in this Ordinance;

(e) hear appeals against orders of the District Grievance Redressal Officer;

(f) prepare annual reports which shall be laid before the State Legislature by the State Government.

(7) The State Government shall make available to the State Commission, such administrative and technical staff, as it may consider necessary for proper functioning of the State Commission.

(8) The method of appointment of the staff under sub-section (7), their salaries, allowances and conditions of service shall be such, as may be prescribed by the State Government.

(9) The State Government may remove from office the Chairperson or any Member who—

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as a member; or

(c) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuation in office detrimental to the public interest.

(10) No such Chairperson or Member shall be removed under clause (d) or clause (e) of sub-section (9) unless he has been given a reasonable opportunity of being heard in the matter.

17. The State Government shall provide for salary and allowances of Chairperson, other Members, Member-Secretary, support staff, and other administrative expenses required for proper functioning of the State Commission.

Salary and allowances of Chairperson, Member, Member-Secretary and other staff of State Commission.

18. The State Government may, if considers it necessary, by notification, designate any statutory commission or a body to exercise the powers and perform the functions of the State Commission referred to in section 16.

Designation of any Commission or body to function as State Commission.

19. Notwithstanding anything contained in sub-section (1) of section

Joint State Food Commission.

16, two or more States may have a joint State Food Commission for the purposes of this Ordinance with the approval of the Central Government.

Powers relating to inquiries.

20. (1) The State Commission shall, while inquiring into any matter referred to in clauses (b) and (e) of sub-section (6) of section 16, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, and, in particular, in respect of the following matters, namely:— 5 of 1908.

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office; and
- (e) issuing commissions for the examination of witnesses or documents.

(2) The State Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973. 2 of 1974.

Vacancies, etc., not to invalidate proceedings of State Commission.

21. No act or proceeding of the State Commission shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the State Commission; or
- (b) any defect in the appointment of a person as the Chairperson or a Member of the State Commission; or
- (c) any irregularity in the procedure of the State Commission not affecting the merits of the case.

CHAPTER VIII

OBLIGATIONS OF CENTRAL GOVERNMENT FOR FOOD SECURITY

Central Government to allocate required quantity of foodgrains from central pool to State Governments.

22. (1) The Central Government shall, for ensuring the regular supply of foodgrains to persons belonging to eligible households, allocate from the central pool the required quantity of foodgrains to the State Governments under the Targeted Public Distribution System, as per the entitlements under section 3 and at prices specified in Schedule I.

(2) The Central Government shall allocate foodgrains in accordance with the number of persons belonging to the eligible households identified in each State under section 10.

(3) The Central Government shall provide foodgrains in respect of entitlements under sections 4, 5 and section 6; to the State Governments, at prices specified for the persons belonging to eligible households in Schedule I.

(4) Without prejudice to sub-section (1), the Central Government shall,—

(a) procure foodgrains for the central pool through its own agencies and the State Governments and their agencies;

(b) allocate foodgrains to the States;

(c) provide for transportation of foodgrains, as per allocation, to the depots designated by the Central Government in each State;

(d) provide assistance to the State Government in meeting the expenditure incurred by it towards intra-State movement, handling of foodgrains and margins paid to fair price shop dealers, in accordance with such norms and manner as may be prescribed by the Central Government; and

(e) create and maintain required modern and scientific storage facilities at various levels.

23. In case of short supply of foodgrains from the central pool to a State, the Central Government shall provide funds to the extent of short supply to the State Government for meeting obligations under Chapter II in such manner as may be prescribed by the Central Government.

Provisions for funds by Central Government to State Government in certain cases.

CHAPTER IX

OBLIGATIONS OF STATE GOVERNMENT FOR FOOD SECURITY

24. (1) The State Government shall be responsible for implementation and monitoring of the schemes of various Ministries and Departments of the Central Government in accordance with guidelines issued by the Central Government for each scheme, and their own schemes, for ensuring food security to the targeted beneficiaries in their State.

Implementation and monitoring of schemes for ensuring food security.

(2) Under the Targeted Public Distribution System, it shall be the duty of the State Government to—

(a) take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I, organise intra-State allocations for delivery of the allocated foodgrains through their authorised agencies at the door-step of each fair price shop; and

(b) ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule I.

(3) For foodgrain requirements in respect of entitlements under sections 4, 5 and section 6, it shall be the responsibility of the State Government to take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I for persons belonging to eligible households and ensure actual delivery of entitled benefits, as specified in the sections aforesaid.

(4) In case of non-supply of the entitled quantities of foodgrains or meals to entitled persons under Chapter II, the State Government shall be responsible for payment of food security allowance specified in section 8.

(5) For efficient operations of the Targeted Public Distribution

System, every State Government shall,—

(a) create and maintain scientific storage facilities at the State, District and Block levels, being sufficient to accommodate foodgrains required under the Targeted Public Distribution System and other food based welfare schemes;

(b) suitably strengthen capacities of their Food and Civil Supplies Corporations and other designated agencies;

(c) establish institutionalised licensing arrangements for fair price shops in accordance with the relevant provisions of the Public Distribution System (Control) Order, 2001 made under the Essential Commodities Act, 1955, as amended from time to time.

10 of 1955.

CHAPTER X

OBLIGATIONS OF LOCAL AUTHORITIES

Implementation of Targeted Public Distribution System by local authority in their areas.

25. (1) The local authorities shall be responsible for the proper implementation of this Ordinance in their respective areas.

(2) Without prejudice to sub-section (1), the State Government may assign, by notification, additional responsibilities for implementation of the Targeted Public Distribution System to the local authority.

Obligations of local authority.

26. In implementing different schemes of the Ministries and Departments of the Central Government and the State Governments, prepared to implement provisions of this Ordinance, the local authority shall be responsible for discharging such duties and responsibilities as may be assigned to them, by notification, by the respective State Governments.

CHAPTER XI

TRANSPARENCY AND ACCOUNTABILITY

Disclosure of records of Targeted Public Distribution System.

27. All Targeted Public Distribution System related records shall be placed in the public domain and kept open for inspection to the public, in such manner as may be prescribed by the State Government.

Conduct of social audit.

28. (1) Every local authority, or any other authority or body, as may be authorised by the State Government, shall conduct or cause to be conducted, periodic social audits on the functioning of fair price shops, Targeted Public Distribution System and other welfare schemes, and cause to publicise its findings and take necessary action, in such manner as may be prescribed by the State Government.

(2) The Central Government may, if it considers necessary, conduct or cause to be conducted social audit through independent agencies having experience in conduct of such audits.

Setting up of Vigilance Committees.

29. (1) For ensuring transparency and proper functioning of the Targeted Public Distribution System and accountability of the functionaries in such system, every State Government shall set up Vigilance Committees as specified in the Public Distribution System (Control) Order, 2001, made under the Essential Commodities Act, 1955, as amended from time to time, at the State, District, Block and fair price shop levels consisting of such persons, as may be prescribed by the State Government giving due representation to the local authorities, the

10 of 1955.

Scheduled Castes, the Scheduled Tribes, women and destitute persons or persons with disability.

(2) The Vigilance Committees shall perform the following functions, namely:—

(a) regularly supervise the implementation of all schemes under this Ordinance;

(b) inform the District Grievance Redressal Officer, in writing, of any violation of the provisions of this Ordinance; and

(c) inform the District Grievance Redressal Officer, in writing, of any malpractice or misappropriation of funds found by it.

CHAPTER XII

PROVISIONS FOR ADVANCING FOOD SECURITY

30. The Central Government and the State Governments shall, while implementing the provisions of this Ordinance and the schemes for meeting specified entitlements, give special focus to the needs of the vulnerable groups especially in remote areas and other areas which are difficult to access, hilly and tribal areas for ensuring their food security.

Food security for people living in remote, hilly and tribal areas.

31. The Central Government, the State Governments and local authorities shall, for the purpose of advancing food and nutritional security, strive to progressively realise the objectives specified in Schedule III.

Steps to further advance food and nutritional security.

CHAPTER XIII

MISCELLANEOUS

32. (1) The provisions of this Ordinance shall not preclude the Central Government or the State Government from continuing or formulating other food based welfare schemes.

Other welfare schemes.

(2) Notwithstanding anything contained in this Ordinance, the State Government may, continue with or formulate food or nutrition based plans or schemes providing for benefits higher than the benefits provided under this Ordinance, from its own resources.

33. Any public servant or authority found guilty, by the State Commission at the time of deciding any complaint or appeal, of failing to provide the relief recommended by the District Grievance Redressal Officer, without reasonable cause, or wilfully ignoring such recommendation, shall be liable to penalty not exceeding five thousand rupees:

Penalties.

Provided that the public servant or the public authority, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed.

34. (1) For the purpose of adjudging penalty under section 33, the State Commission shall authorise any of its member to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

Power to adjudicate.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted

with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to provide the relief recommended by the District Grievance Redressal Officer, without reasonable cause, or wilfully ignored such recommendation, he may impose such penalty as he thinks fit in accordance with the provisions of section 33.

Power to
delegate by
Central
Government and
State
Government.

35. (1) The Central Government may, by notification, direct that the powers exercisable by it (except the power to make rules), in such circumstances and subject to such conditions and limitations, be exercisable also by the State Government or an officer subordinate to the Central Government or the State Government as it may specify in the notification.

(2) The State Government may, by notification, direct that the powers exercisable by it (except the power to make rules), in such circumstances and subject to such conditions and limitations, be exercisable also by an officer subordinate to it as it may specify in the notification.

Ordinance to
have overriding
effect.

36. The provisions of this Ordinance or the schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law.

Power to amend
Schedules.

37. (1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend Schedule I or Schedule II or Schedule III and thereupon Schedule I or Schedule II or Schedule III, as the case may be, shall be deemed to have been amended accordingly.

(2) A copy of every notification issued under sub-section (1), shall be laid before each House of Parliament as soon as may be after it is issued.

Power of Central
Government to
give directions.

38. The Central Government may, from time to time, give such directions, as it may consider necessary, to the State Governments for the effective implementation of the provisions of this Ordinance and the State Governments shall comply with such directions.

Power of Central
Government to
make rules.

39. (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules to carry out the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) scheme including cost sharing for providing maternity benefit to pregnant women and lactating mothers under clause (b) of section 4;

(b) schemes covering entitlements under sections 4, 5 and section 6 including cost sharing under section 7;

(c) amount, time and manner of payment of food security allowance to entitled individuals under section 8;

(d) introducing schemes of cash transfer, food coupons or other schemes to the targeted beneficiaries in lieu of their foodgrains entitlements in such areas and manner under clause (h) of sub-section

(2) of section 12;

(e) the norms and manner of providing assistance to the State Governments in meeting expenditure under clause (d) of sub-section (4) of section 22;

(f) manner in which funds shall be provided by the Central Government to the State Governments in case of short supply of foodgrains, under section 23;

(g) any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by the Central Government by rules.

(3) Every rule made by the Central Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

40. (1) The State Government may, by notification, and subject to the condition of previous publication, and consistent with this Ordinance and the rules made by the Central Government, make rules to carry out the provisions of this Ordinance.

Power of State Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) guidelines for identification of priority households under sub-section (1) of section 10;

(b) internal grievance redressal mechanism under section 14;

(c) qualifications for appointment as District Grievance Redressal Officer and its powers under sub-section (2) of section 15;

(d) method and terms and conditions of appointment of the District Grievance Redressal Officer under sub-section (3) of section 15;

(e) manner and time limit for hearing complaints by the District Grievance Redressal Officer and the filing of appeals under sub-sections (5) and (7) of section 15;

(f) method of appointment and the terms and conditions of appointment of Chairperson, other Members and Member-Secretary of the State Commission, procedure for meetings of the Commission and its powers, under sub-section (5) of section 16;

(g) method of appointment of staff of the State Commission,

their salaries, allowances and conditions of service under sub-section (8) of section 16;

(h) manner in which the Targeted Public Distribution System related records shall be placed in the public domain and kept open for inspection to public under section 27;

(i) manner in which the social audit on the functioning of fair price shops, Targeted Public Distribution System and other welfare schemes shall be conducted under section 28;

(j) composition of Vigilance Committees under sub-section (1) of section 29;

(k) schemes or programmes of the Central Government or the State Governments for utilisation of institutional mechanism under section 43;

(l) any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by the State Government by rules.

(3) Every rule, notification and guidelines made or issued by the State Government under this Ordinance shall, as soon as may be after it is made or issued, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

Transitory provisions for schemes, guidelines, etc.

41. The schemes, guidelines, orders and food standard, grievance redressal mechanism, vigilance committees, existing on the date of commencement of this Ordinance, shall continue to be in force and operate till such schemes, guidelines, orders and food standard, grievance redressal mechanism, vigilance committees are specified or notified under this Ordinance or the rules made thereunder:

Provided that anything done or any action taken under the said schemes, guidelines, orders and food standard, grievance redressal mechanism, or by vigilance committees shall be deemed to have been done or taken under the corresponding provisions of this Ordinance and shall continue to be in force accordingly unless and until superseded by anything done or by any action taken under this Ordinance.

Power to remove difficulties.

42. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Utilisation of institutional mechanism for other purposes.

43. The services of authorities to be appointed or constituted under sections 15 and 16 may be utilised in the implementation of other schemes or programmes of the Central Government or the State Governments, as may be prescribed by the State Government.

44. The Central Government, or as the case may be, the State Government, shall be liable for a claim by any person entitled under this Ordinance, except in the case of war, flood, drought, fire, cyclone or earthquake affecting the regular supply of foodgrains or meals to such person under this Ordinance: *Force Majeure.*

Provided that the Central Government may, in consultation with the Planning Commission, declare whether or not any such situation affecting the regular supply of foodgrains or meals to such person has arisen or exist.

SCHEDULE I

[See sections 3(1), 22(1), (3) and 24(2), (3)]

SUBSIDISED PRICES UNDER TARGETED PUBLIC DISTRIBUTION SYSTEM

Eligible households shall be entitled to foodgrains under section 3 at the subsidised price not exceeding rupees 3 per kg for rice, rupees 2 per kg for wheat and rupee 1 per kg for coarse grains for a period of three years from the date of commencement of this Ordinance; and thereafter, at such price, as may be fixed by the Central Government, from time to time, not exceeding,—

- (i) the minimum support price for wheat and coarse grains; and
 - (ii) the derived minimum support price for rice,
- as the case may be.

SCHEDULE II

[See sections 4(a), 5(1) and 6]

NUTRITIONAL STANDARDS

Nutritional standards: The nutritional standards for children in the age group of 6 months to 3 years, age group of 3 to 6 years and pregnant and lactating women required to be met by providing 'Take Home Rations'¹ or nutritious hot cooked meal or ready to eat meal in accordance with the Integrated Child Development Services Scheme and nutritional standards for children in lower and upper primary classes under the Mid Day Meal Scheme are as follows:

Serial number	Category	Type of meal ²	Calories (Kcal)	Protein (g)
1	2	3	4	5
1.	Children (6 months to 3 years)	Take Home Ration	500	12-15
2.	Children (3 to 6 years)	Morning Snack and Hot Cooked Meal	500	12-15
3.	Children (6 months to 6 years) who are malnourished	Take Home Ration	800	20-25
4.	Lower primary classes	Hot Cooked Meal	450	12
5.	Upper primary classes	Hot Cooked Meal	700	20
6.	Pregnant women and Lactating mothers	Take Home Ration	600	18-20

Note: 1.—Energy Dense Food fortified with micronutrients as per 50 per cent. of Recommended Dietary Allowance.

Note: 2.—The provisions of the Food Safety and Standards Act, 2006 (34 of 2006) and any other law for the time being in force shall apply to Meals referred to in this Schedule.

NB: Nutritional standards are notified to provide balanced diet and nutritious foods in terms of the calorie counts, protein value and micronutrients specified.

SCHEDULE III

(See section 31)

PROVISIONS FOR ADVANCING FOOD SECURITY

- (1) Revitalisation of Agriculture —
 - (a) agrarian reforms through measures for securing interests of small and marginal farmers;
 - (b) increase in investments in agriculture, including research and development, extension services, micro and minor irrigation and power to increase productivity and production;
 - (c) ensuring livelihood security to farmers by way of remunerative prices, access to inputs, credit, irrigation, power, crop insurance, etc.;
 - (d) prohibiting unwarranted diversion of land and water from food production.
- (2) Procurement, Storage and Movement related interventions—
 - (a) incentivising decentralised procurement including procurement of coarse grains;
 - (b) geographical diversification of procurement operations;
 - (c) augmentation of adequate decentralised modern and scientific storage;
 - (d) giving top priority to movement of foodgrains and providing sufficient number of rakes for this purpose, including expanding the line capacity of railways to facilitate foodgrain movement from surplus to consuming regions.
- (3) Others: Access to—
 - (a) safe and adequate drinking water and sanitation;
 - (b) health care;
 - (c) nutritional, health and education support to adolescent girls;
 - (d) adequate pensions for senior citizens, persons with disability and single women.

Sd/-

Pranab Mukherjee,
President.

Sd/-

P.K. Malhotra,
Secy. to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. Gothi,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department
Sachivalaya, Gandhinagar
Dated the 26 July, 2013.

No.RPB/14-2013/Act-27-12/E:-The following Act of Parliament is republished for general information:-

Government of India
Ministry of Law and Justice
Legislative Department

New Delhi, the 7th June, 2012 Jaistha, 17, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 7th June, 2012 is hereby published for general information:-

THE COPYRIGHT (AMENDMENT) ACT, 2012

(Act No. 27 of 2012)

[7th June, 2012]

An

Act

to amend the Copyright Act, 1957

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Amendment) Act, 2012.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

14 of 1957

2. In section 2 of the Copyright Act, 1957 (hereinafter referred to as the principal Act),—

Amendment of
section 2.

(i) in clause (f) the portion beginning with the words "on any medium" and ending with the words "produced by any means" shall be omitted;

(ii) after clause (f), the following clause shall be inserted, namely :—

"(fa) "commercial rental" does not include the rental, lease or lending of a lawfully acquired copy of a computer programme, sound recording, visual recording or cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution."

Explanation.—For the purposes of this clause, a “non-profit library or non-profit educational institution” means a library or educational institution which receives grants from the Government or exempted from payment of tax under the Income-tax Act, 1961.

43 of 1961.

(iii) for clause (ff), the following shall be substituted, namely:—

“(ff) “communication to the public” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

Explanation.—For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;”

(iv) in clause (qq), the following proviso shall be inserted, namely:—

“Provided that in a cinematograph film a person whose performance is casual or incidental in nature and, in the normal course of the practice of the industry, is not acknowledged anywhere including in the credits of the film shall not be treated as a performer except for the purpose of clause (b) of section 38B;”

(v) after clause (x), the following clause shall be inserted, namely:—

“(xa) “Rights Management Information” means,—

(a) the title or other information identifying the work or performance;

(b) the name of the author or performer;

(c) the name and address of the owner of rights;

(d) terms and conditions regarding the use of the rights; and

(e) any number or code that represents the information referred to in sub-clauses (a) to (d),

but does not include any device or procedure intended to identify the user;”

(vi) after clause (xx), the following clause shall be inserted, namely:—

“(xxa) “visual recording” means the recording in any medium, by any method including the storing of it by any electronic means, of moving images or of the representations thereof, from which they can be perceived, reproduced or communicated by any method;”

Amendment
of section 11.

3. In section 11 of the principal Act,—

(a) in sub-section (1), for the words “not less than two nor more than fourteen other members”, the words “two other members” shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The salaries and allowances payable to and the other terms and conditions of service of the Chairman and other members of the Copyright Board shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman or any other member shall be varied to his disadvantage after appointment.”

(c) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The Central Government may, after consultation with the Chairman of the Copyright Board, appoint a Secretary to the Copyright Board and such other officers and employees as may be considered necessary for the efficient discharge of the functions of the Copyright Board.”.

4. In section 12 of the principal Act, in sub-section (2), for the words “members, each Bench consisting of not less than three members”, the word “members” shall be substituted.

Amendment
of section 12.

5. In section 14 of the principal Act,—

Amendment
of section 14.

(i) in clause (c), for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) to reproduce the work in any material form including—

(A) the storing of it in any medium by electronic or other means; or

(B) depiction in three-dimensions of a two-dimensional work; or

(C) depiction in two-dimensions of a three-dimensional work;”;

(ii) in clause (d),—

(a) for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) to make a copy of the film, including—

(A) a photograph of any image forming part thereof; or

(B) storing of it in any medium by electronic or other means;”;

(b) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;”;

(iii) in clause (e),—

(a) in sub-clause (i), after the words “embodying it”, the words “including storing of it in any medium by electronic or other means” shall be inserted;

(b) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;”.

2 of 1911.
16 of 2000.

6. In section 15 of the principal Act, for the words and figures, “Designs Act, 1911”, wherever they occur, the words and figures “Designs Act, 2000” shall be substituted.

Amendment
of section 15.

7. In section 17 of the principal Act, in clause (e), the following proviso shall be inserted at the end, namely:—

Amendment
of section 17.

Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13;”.

8. In section 18 of the principal Act, in sub-section (1), after the proviso, the following provisos shall be inserted, namely:—

Amendment
of section 18.

“Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void."

Amendment
of section 19.

9. In section 19 of the principal Act,—

(i) in sub-section (3), for the words "royalty payable, if any", the words "royalty and any other consideration payable" shall be substituted;

(ii) after sub-section (7), the following sub-sections shall be inserted, namely:—

"(8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.

(9) No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.

(10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilisation of such work in any form."

Amendment
of section
19A.

10. In section 19A of the principal Act,—

(i) in sub-section (2), in the second proviso, for the words "Provided further that", the following shall be substituted, namely:—

"Provided further that, pending the disposal of an application for revocation of assignment under this sub-section, the Copyright Board may pass such order, as it deems fit regarding implementation of the terms and conditions of assignment including any consideration to be paid for the enjoyment of the rights assigned:—

Provided also that";

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Every complaint received under sub-section (2) shall be dealt with by the Copyright Board as far as possible and efforts shall be made to pass the final order in the matter within a period of six months from the date of receipt of the complaint and any delay in compliance of the same, the Copyright Board shall record the reasons thereof."

Amendment
of section 21.

11. In section 21 of the principal Act,—

(i) in sub-section (1), for the words "the Registrar of Copyrights", the words "the Registrar of Copyrights or by way of public notice" shall be substituted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) The Registrar of Copyrights shall, within fourteen days from the publication of the notice in the Official Gazette, post the notice on the official website of the Copyright Office so as to remain in the public domain for a period of not less than three years."

12. In section 22 of the principal Act, the brackets and words "(other than a photograph)" shall be omitted. Amendment of section 22.
13. Section 25 of the principal Act shall be omitted. Omission of section 25.
14. In section 30 of the principal Act, for the words "writing signed by him", the words "writing by him" shall be substituted. Amendment of section 30.
15. In section 30A of the principal Act and in its marginal heading, for the words, figures and letter, "section 19 and 19A", the word and figures "section 19" shall be substituted. Amendment of section 30A.
16. In section 31 of the principal Act,—
(i) in sub-section (1),—
(a) for the words "any Indian work", the words "any work" shall be substituted;
(b) for the words "licence to the complainant" the words "licence to such person or persons who, in the opinion of the Copyright Board, is or are qualified to do so" shall be substituted;
(c) the *Explanation* shall be omitted;
(ii) sub-section (2) shall be omitted. Amendment of section 31.
17. In section 31A of the principal Act,—
(i) in the marginal heading, for the words "Indian works", the words "or published works" shall be substituted; Amendment of section 31A.
(ii) for sub-section (1), the following sub-section shall be substituted, namely:—
"(1) Where, in the case of any unpublished work or any work published or communicated to the public and the work is withheld from the public in India, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish or communicate to the public such work or a translation thereof in any language."
18. After section 31A of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 31B, 31C, and 31D.
- "31B. (1) Any person working for the benefit of persons with disability on a profit basis or for business may apply to the Copyright Board, in such form and manner and accompanied by such fee as may be prescribed, for a compulsory licence to publish any work in which copyright subsists for the benefit of such persons, in a case to which clause (zb) of sub-section (1) of section 52 does not apply and the Copyright Board shall dispose of such application as expeditiously as possible and endeavour shall be made to dispose of such application within a period of two months from the date of receipt of the application. Compulsory licence for benefit of disabled.
- (2) The Copyright Board may, on receipt of an application under sub-section (1), inquire, or direct such inquiry as it considers necessary to establish the credentials of the applicant and satisfy itself that the application has been made in good faith.
- (3) If the Copyright Board is satisfied, after giving to the owners of rights in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, that a compulsory licence needs to be issued to make the work available to the disabled, it may direct the Registrar of Copyrights to grant to the applicant such a licence to publish the work.
- (4) Every compulsory licence issued under this section shall specify the means and format of publication, the period during which the compulsory licence may be exercised and, in the case of issue of copies, the number of copies that may be issued including the rate or royalty:

Statutory
licence for
cover
versions.

Provided that where the Copyright Board has issued such a compulsory licence it may, on a further application and after giving reasonable opportunity to the owners of rights, extend the period of such compulsory licence and allow the issue of more copies as it may deem fit.

31C. (1) Any person desirous of making a cover version, being a sound recording in respect of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work, may do so subject to the provisions of this section:

Provided that such sound recordings shall be in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use.

(2) The person making the sound recordings shall give prior notice of his intention to make the sound recordings in the manner as may be prescribed, and provide in advance copies of all covers or labels with which the sound recordings are to be sold, and pay in advance, to the owner of rights in each work royalties in respect of all copies to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that such sound recordings shall not be sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a cover version made under this section.

(3) The person making such sound recordings shall not make any alteration in the literary or musical work which has not been made previously by or with the consent of the owner of rights, or which is not technically necessary for the purpose of making the sound recordings:

Provided that such sound recordings shall not be made until the expiration of five calendar years after the end of the year in which the first sound recordings of the work was made.

(4) One royalty in respect of such sound recordings shall be paid for a minimum of fifty thousand copies of each work during each calendar year in which copies of it are made:

Provided that the Copyright Board may, by general order, fix a lower minimum in respect of works in a particular language or dialect having regard to the potential circulation of such works.

(5) The person making such sound recordings shall maintain such registers and books of account in respect thereof, including full details of existing stock as may be prescribed and shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this section, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty.

Explanation.—For the purposes of this section “cover version” means a sound recording made in accordance with this section.

31D. (1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.

(2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Copyright Board.

(3) The rates of royalty for radio broadcasting shall be different from television broadcasting and the Copyright Board shall fix separate rates for radio broadcasting and television broadcasting.

(4) In fixing the manner and the rate of royalty under sub-section (2), the Copyright Board may require the broadcasting organisation to pay an advance to the owners of rights.

(5) The names of the authors and the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.

(6) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

(7) The broadcasting organisation shall —

(a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and

(b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast, in such manner as may be prescribed.

(8) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2012.”

19. In section 33 of the principal Act,—

(i) in sub-section (1), for the words "provided further", the following shall be substituted, namely:—

"Provided further that the business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act:

Provided also”;

(ii) after sub-section (3), the following shall be inserted, namely:—

“(3A) The registration granted to a copyright society under sub-section (3) shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under section 36:

Provided that the renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty:

Provided further that every copyright society already registered before the coming into force of the copyright (Amendment) Act, 2012 shall get itself registered under this

Statutory
licence for
broadcasting
of literary
and musical
works and
sound
recording.

Amendment
of section 33.

Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.”;

(iii) in sub-sections (4) and (5), for the words "owners of rights", the words "authors and other owners of right" shall be substituted;

(iv) in sub-section (5), after the word "concerned" the words "or for non-compliance of sections 33A, sub-section (3) of section 35 and section 36 or any change carried out in the instrument by which the copyright society is established or incorporated and registered by the Central Government without prior notice to it" shall be inserted.

Insertion of new section 33A.

Tariff Scheme by copyright societies.

20. After section 33 of the principal Act, the following section shall be inserted, namely:—

“33A. (1) Every copyright society shall publish its tariff scheme in such manner as may be prescribed.

(2) Any person who is aggrieved by the tariff scheme may appeal to the Copyright Board and the Board may, if satisfied after holding such inquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein:

Provided that the aggrieved person shall pay to the copyright society any fee as may be prescribed that has fallen due before making an appeal to the Copyright Board and shall continue to pay such fee until the appeal is decided, and the Board shall not issue any order staying the collection of such fee pending disposal of the appeal:

Provided further that the Copyright Board may after hearing the parties fix an interim tariff and direct the aggrieved parties to make the payment accordingly pending disposal of the appeal.”.

Amendment of section 34.

21. In section 34 of the principal Act, for the words “owner of rights”, wherever they occur, the words “author and other owners of right” shall be substituted.

Omission of section 34A.

22. Section 34A of the principal Act shall be omitted.

Amendment of section 35.

23. In section 35 of the principal Act and its marginal heading,—

(a) for the words “owners of rights”, wherever they occur, the words “author and other owners of right” shall be substituted;

(b) after sub-section (2), the following sub-sections shall be inserted, namely:—

(3) Every copyright society shall have a governing body with such number of persons elected from among the members of the society consisting of equal number of authors and owners of work for the purpose of the administration of the society as may be specified.

(4) All members of copyrights society shall enjoy equal membership rights and there shall be no discrimination between authors and owners of rights in the distribution of royalties.

Amendment of section 36A.

24. In section 36A of the principal Act,—

(a) for the words “performing rights society”, the words “copyright society” shall be substituted;

(b) for the words, brackets and figures “the Copyright (Amendment) Act, 1994”, the words, brackets and figures “the Copyright (Amendment) Act, 2012” shall be substituted.

38 of 1994.

Amendment of section 37.

25. In section 37 of the principal Act, in sub-section (3), for clause (e), the following clause shall be substituted, namely:—

“(e) sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to in clause (c) or clause (d).”.

26. In section 38 of the principal Act, sub-sections (3) and (4) shall be omitted.

Amendment of section 38.

27. After section 38 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 38A and 38B.

“38A. (1) Without prejudice to the rights conferred on authors, the performer's right which is an exclusive right subject to the provisions of this Act to do or authorise for doing any of the following acts in respect of the performance or any substantial part thereof, namely:—

Exclusive right of performers.

(a) to make a sound recording or a visual recording of the performance, including—

(i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means;

(ii) issuance of copies of it to the public not being copies already in circulation;

(iii) communication of it to the public;

(iv) selling or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording;

(b) to broadcast or communicate the performance to the public except where the performance is already broadcast.

(2) Once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer's right in the same film:

Provided that, notwithstanding anything contained in this sub-section, the performer shall be entitled for royalties in case of making of the performances for commercial use.

38B. The performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right,—

Moral rights of the performer.

(a) to claim to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance; and

(b) to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

Explanation.—For the purposes of this clause, it is hereby clarified that mere removal of any portion of a performance for the purpose of editing, or to fit the recording within a limited duration, or any other modification required for purely technical reasons shall not be deemed to be prejudicial to the performer's reputation.

28. For section 39A of the principal Act, the following section shall be substituted, namely:—

Substitution of a new section for section 39A.

“39A. (1) Sections 18, 19, 30, 30A, 33, 33A, 34, 35, 36, 53, 55, 58, 63, 64, 65, 65A, 65B and 66 shall, with necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performer's right in any performance as they apply in relation to copyright in a work:

Certain provisions to apply in case of broadcast reproduction right and performer's rights.

Provided that where copyright or performer's right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast, shall be given without the consent of the owner of right or performer, as the case may be, or both of them:

Provided further that the broadcast reproduction right or performer's right shall not subsist in any broadcast or performance if that broadcast or performance is an infringement of the copyright in any work.

(2) The broadcast reproduction right or the performer's right shall not affect the separate copyright in any work in respect of which, the broadcast or the performance, as the case may be, is made."

Amendment
of section 40.

29. In section 40 of the principal Act, in the proviso, in clause (iii), after the words "the order relates", the words "but such a term of copyright shall not exceed the term of copyright provided under this Act" shall be inserted.

Amendment
of section
40A.

30. In section 40A of the principal Act, in sub-section (2), in clause (ii), the following proviso shall be inserted, namely:—

"Provided that it does not exceed the period provided under this Act;"

Amendment
of section 45.

31. In section 45 of the principal Act, in sub-section (1), in the proviso,—

(i) for the words "relation to any goods", the words "relation to any goods or services" shall be substituted;

(ii) for the words and figures "section 4 of the Trade and Merchandise Marks Act, 1958" the words and figures "section 3 of the Trade Marks Act, 1999" shall be substituted.

43 of 1958.
47 of 1999.

Amendment
of section 52.

32. In section 52 of the principal Act, in sub-section (1),—

(i) for clause (a), the following clause shall be substituted, namely:—

(a) a fair dealing with any work, not being a computer programme, for the purposes of—

(i) private or personal use, including research;

(ii) criticism or review, whether of that work or of any other work;

(iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public.

Explanation.—The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright."

(ii) for clauses (b), (c), (d), (e), (f), (g), (h), (i) and (j), the following shall be substituted, namely:—

"(b) the transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;

(c) transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy;

Provided that if the person responsible for the storage of the copy has received a written complaint from the owner of copyright in the work, complaining that such transient or incidental storage is an infringement, such person responsible for the storage shall refrain from facilitating such access for a period of twenty-one days or till he receives an order from the competent court refraining from facilitating access and in case no such order is received before the expiry of such period of twenty-one days, he may continue to provide the facility of such access;

(d) the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(e) the reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;";

(f) the reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;

(g) the reading or recitation in public of reasonable extracts from a published literary or dramatic work;

(h) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists:

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation.—In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

(i) the reproduction of any work—

(i) by a teacher or a pupil in the course of instruction; or

(ii) as part of the questions to be answered in an examination; or

(iii) in answers to such questions;

(j) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording;";

(iii) for clause (n), the following clause shall be substituted, namely:—

"(n) the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work;";

(iv) in clause (o), for the words "public library", the words, "non-commercial public library" shall be substituted;

(v) after clause (v), the following clause shall be inserted, namely:—

"(w) the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device;

(vi) in clause (y), for the words "dramatic or", the words "dramatic, artistic or" shall be substituted;

(vii) after clause (za) and the *Explanation* thereunder, the following shall be inserted, namely:—

"(zb) the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by—

(i) any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or

(ii) any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons:

Provided that the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production:

Provided further that the organisation shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business.

Explanation.—For the purposes of this sub-clause, “any organisation” includes an organisation registered under section 12A of the Income-tax Act, 1961 and working for the benefit of persons with disability or recognised under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 or receiving grants from the government for facilitating access to persons with disabilities or an educational institution or library or archives recognised by the Government.” 43 of 1961. 1 of 1996.

(zc) the importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully.”

Omission of section 52B.

33. Section 52B of the principal Act shall be omitted.

Substitution of new section for section 53.

34. For section 53 of the principal Act, the following section shall be substituted, namely:—

Importation of infringing copies.

“53. (1) The owner of any right conferred by this Act in respect of any work or any performance embodied in such work, or his duly authorised agent, may give notice in writing to the Commissioner of Customs, or to any other officer authorised in this behalf by the Central Board of Excise and Customs,—

(a) that he is the owner of the said right, with proof thereof; and

(b) that he requests the Commissioner for a period specified in the notice, which shall not exceed one year, to treat infringing copies of the work as prohibited goods, and that infringing copies of the work are expected to arrive in India at a time and a place specified in the notice.

(2) The Commissioner, after scrutiny of the evidence furnished by the owner of the right and on being satisfied may, subject to the provisions of sub-section (3), treat infringing copies of the work as prohibited goods that have been imported into India, excluding goods in transit:

Provided that the owner of the work deposits such amount as the Commissioner may require as security having regard to the likely expenses on demurrage, cost of storage and compensation to the importer in case it is found that the works are not infringing copies.

(3) When any goods treated as prohibited under sub-section (2) have been detained, the Customs Officer detaining them shall inform the importer as well as the person who gave notice under sub-section (1) of the detention of such goods within forty-eight hours of their detention.

(4) The Customs Officer shall release the goods, and they shall no longer be treated as prohibited goods, if the person who gave notice under sub-section (1) does not produce any order from a court having jurisdiction as to the temporary or permanent disposal of such goods within fourteen days from the date of their detention.”

35. In section 55 of the principal Act, in sub-section (2), for the portion beginning with the words "a name purporting to be" and ending with the words "as the case may be, appears", the following shall be substituted, namely:—

Amendment
of section 55.

"or, subject to the provisions of sub-section (3) of section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears".

36. In section 57 of the principal Act,—

Amendment
of section 57.

(i) in sub-section (1), in clause (b), the words "which is done before the expiration of the term of copyright" shall be omitted;

(ii) in sub-section (2), the words "other than the right to claim authorship of the work" shall be omitted.

37. After section 65 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
65A and 65B.

"65A. (1) Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

Protection of
technological
measures.

(2) Nothing in sub-section (1) shall prevent any person from,—

(a) doing anything referred to therein for a purpose not expressly prohibited by this Act:

Provided that any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including his name, address and all relevant particulars necessary to identify him and the purpose for which he has been facilitated; or

(b) doing anything necessary to conduct encryption research using a lawfully obtained encrypted copy; or

(c) conducting any lawful investigation; or

(d) doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorisation of its owner; or

(e) operator; or

(f) doing anything necessary to circumvent technological measures intended for identification or surveillance of a user; or

(g) taking measures necessary in the interest of national security.

65B. Any person, who knowingly,—

Protection of
Rights
Management
Information.

(i) removes or alters any rights management information without authority, or

(ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority,

shall be punishable with imprisonment which may extend to two years and shall also be liable to fine:

Provided that if the rights management information has been tampered with in any work, the owner of copyright in such work may also avail of civil remedies provided under Chapter XII against the persons indulging in such acts."

Amendment
of section 66.

38. In section 66 of the principal Act, after the words "delivered up to the owner of the copyright," the words "or may make such order as it may deem fit regarding the disposal of such copies or plates" shall be inserted.

Amendment
of section 78.

39. In section 78 of the principal Act, in sub-section (2),—

(i) for clause (a), the following clause shall be substituted, namely:—

(a) the salaries and allowances payable to and the other terms and conditions of service of the chairman and other members of the Copyright Board under sub-section (2) of section 11;

(ii) after clause (c), the following clauses shall be inserted, namely:—

"(cA) the form and manner in which an organisation may apply to the Copyright Board for compulsory licence for disabled and the fee which may accompany such application under sub-section (1) of section 31B;

(cB) the manner in which a person making sound recording may give prior notice of his intention to make sound recording under sub-section (2) of section 31C;

(cC) the register and books of account and the details of existing stock which a person making sound recording may maintain under sub-section (5) of section 31C;

(cD) the manner in which prior notice may be given by a broadcasting organisation under sub-section (2) of section 31D;

(cE) the reports and accounts which may be maintained under clause (a), and the inspection of records and books of account which may be made under clause (b) of sub-section (7) of section 31D;";

(iii) after clause (cc), the following clauses shall be inserted, namely:—

"(ccA) the manner in which a copyright society may publish its Tariff Scheme under sub-section (1) of section 33A;

(ccB) the fee which is to be paid before filing an appeal to the Copyright Board under sub-section (2) of section 33A;";

(ccC) the form of application for renewal of registration of a copyright society and the fee which may accompany such application under sub-section (3A) of section 33;

(iv) clause (db) shall be omitted.

Sd/-

V. K. BHASIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. Gothi,

Secretary to Government



सत्यमेव जयते

The Gujarat Government Gazette

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 26th July, 2013.

No. RPB/15-2013/Act.-28-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 7th June, 2012/Jaistha 17, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 7th June, 2012, is hereby published for general information:-

THE NATIONAL INSTITUTES OF TECHNOLOGY (AMENDMENT) ACT, 2012

AN

(Act No. 28 of 2012)

ACT

[7th June, 2012]

to amend the National Institutes of Technology Act, 2007.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows :-

1. (1) This Act may be called the National Institutes of Technology (Amendment) Act, 2012. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

29 of 2007.

2. In the National Institutes of Technology Act, 2007 (hereinafter referred to as the principal Act), in the long title, for the words "certain institutions of technology", the words "certain institutions of technology, science education and research" shall be substituted. Amendment of long title.

3. In section 1 of the principal Act, in sub-section (1), for the words "National Institutes of Technology", the words "National Institutes of Technology, Science Education and Research" shall be substituted. Amendment of section 1.

4. In section 2 of the principal Act, for the words "the Schedule", the words "the First Schedule and the Second Schedule" shall be substituted. Amendment of section 2.

Amendment of
section 3.

5. In section 3 of the principal Act,—

(i) in clause (c), for the words “the Schedule” at both the places where they occur, the words “the First Schedule and the Second Schedule” shall be substituted;

(ii) in clause (d), after the word and figures “section 30”, the words, brackets, figures and letter “or sub-section (I) of section 30A, as the case may be,” shall be inserted;

(iii) in clause (g), for the words “the Schedule”, the words “the First Schedule and the Second Schedule” shall be substituted;

(iv) in clause (h), for the words “the Schedule”, the words “the First Schedule and the Second Schedule” shall be substituted;

(v) in clause (m), for the words “the Schedule”, the words “the First Schedule and the Second Schedule” shall be substituted.

Amendment of
section 4.

6. In section 4 of the principal Act, in sub-section (I), for the words, “the Schedule” the words “the First Schedule and the Second Schedule” shall be substituted.

Amendment of
section 6.

7. In section 6 of the principal Act, in sub-section (I), in clause (h), the words “and the Deputy Director” shall be omitted.

Amendment of
section 11.

8. In section 11 of the principal Act,—

(i) for the word “Institute” wherever it occurs, the words “Institute mentioned in the First Schedule” shall be substituted;

(ii) in clause (e), the word “and” occurring at the end shall be omitted;

(iii) after clause (f), the following clause shall be inserted, namely:—

“(g) the Director of the Indian Institute of Technology in whose zone the Institute is located, or his nominee, not below the rank of a Professor.”.

Insertion of
new section
11A.

9. After section 11 of the principal Act, the following section shall be inserted, namely:—

“11A. The Board of every Institute mentioned in the Second Schedule shall consist of the following members, namely:—

(a) the Chairperson to be nominated by the Visitor;

(b) Secretary, Department of Higher Education, Government of India, or his nominee not below the rank of the Joint Secretary to the Government of India, *ex officio*;

(c) Director of the Institute, *ex officio*;

(d) Director of Indian Institute of Science, Bangalore, *ex officio*;

(e) Director of one of the Indian Institutes of Technology, to be nominated by the Central Government;

(f) two Secretaries to the Government of India, to be nominated by the Central Government representing its Scientific or Industrial Ministries;

(g) Chief Secretary of the State in which the Institute is located, or his nominee not below the rank of the Joint Secretary to the Government of India, *ex officio*;

(h) two professors of the Institute to be nominated by the Senate;

(i) two eminent scientists, to be nominated by the Council, having special knowledge or practical experience in respect of education, engineering or science, one of whom shall be a woman; and

(j) Financial Advisor, Ministry of Human Resource Development, *ex officio*.”.

Board of
Institutes of
Second
Schedule.

10. In section 12 of the principal Act,—

Amendment of
section 12.

(i) in clause (c), after the figures "11", the words, brackets, letters and figures "and clause (h) of section 11A" shall be inserted;

(ii) in clause (d), after the word and figures "section 11", the words, figures and letter "or section 11A, as the case may be," shall be inserted;

(iii) in clause (f), after the figures "11", the words, brackets, letters and figures "and clauses (c) and (h) of section 11A" shall be inserted.

11. In section 17 of the principal Act,—

Amendment of
section 17.

(a) in sub-section (1), the words "and Deputy Director" shall be omitted;

(b) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) The Deputy Director of every Institute shall be appointed in such manner and on such terms and conditions as may be laid down by the Statutes and shall exercise such powers and perform such duties as may be assigned to him by this Act or the Statutes or by the Director."

12. In section 24 of the principal Act, the words "and Deputy Director" shall omitted.

Amendment of
section 24.
Amendment of
section 30.

13. In section 30 of the principal Act, in sub-section (1), for the word "Schedule", the words "First Schedule" shall be substituted.

14. After section 30 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
30A.

"30A. (1) With effect from such date as the Central Government may, by notification, specify in this behalf, there shall be established for all the Institutes specified in column 3 of the Second Schedule, a central body to be called the Council.

Establishment
of Council for
the Institutes
of Second
Schedule.

(2) The Council under sub-section (1) shall consist of the following members, namely:—

(a) the Minister in charge of the Ministry or Department of the Central Government having administrative control of the technical education, *ex officio*, Chairman;

(b) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the technical education, *ex officio*, Vice-Chairman;

(c) the Chairperson of every Board of the Institutes mentioned in the Second Schedule, *ex officio*;

(d) the Director of every Institute mentioned in the Second Schedule, *ex officio*;

(e) the Chairman, University Grants Commission, *ex officio*;

(f) the Director-General, Council of Scientific and Industrial Research, *ex officio*;

(g) four Secretaries to the Government of India to represent the Ministries or Departments of the Central Government dealing with bio-technology, atomic energy, information technology and space, *ex officio*;

(h) the Chairman, Defence Research and Development Organisation, *ex officio*;

(i) not less than three, but not more than five persons to be nominated by the Visitor, at least one of whom shall be a woman, having special knowledge or practical experience in respect of education, industry, science or technology;

(j) three members of Parliament, of whom two shall be chosen by the House of the People and one by the Council of States:

Provided that the office of member of the Council shall not disqualify its holder for being chosen as or for being, a member of either House of Parliament;

(k) two Secretaries to the State Government, from amongst the Ministries or Departments of that Government dealing with technical education where the Institute is located, *ex officio*;

(l) Financial Adviser, dealing with the Human Resource Development Ministry or Departments of that Government dealing with technical education where the Institute is located, *ex officio*; and

(m) one officer not below the rank of the Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the scientific or technical education, *ex officio*, Member-Secretary.”.

Amendment
of section 31.

15. In section 31 of the principal Act, in sub-section (2), after the word and figures “section 30”, the words, brackets, letters and figures “and clause (j) of sub-section (2) of section 30A” shall be inserted.

Amendment
of section 37.

16. In section 37 of the principal Act,—

(i) in clause (a), after the words “every Institute”, the words “mentioned in the First Schedule” shall be inserted;

(ii) after clause (b), the following clauses shall be inserted, namely:—

“(c) recruitment process and disciplinary proceedings, which had commenced before the commencement of the National Institutes of Technology (Amendment) Act, 2012, shall be completed, *mutatis mutandis*, in accordance with the relevant provisions in force immediately before such commencement.

Explanation.— Recruitment process for a post may be taken to have commenced from the date of publication of the advertisement inviting application for the post, and disciplinary proceedings against an employee of the Institute may be taken to have commenced on the date of issue of charge sheet for major penalty or show cause notice for minor penalty to such employee;

(d) all matters, which are meant to be provided through Statutes and Ordinances under sections 25 and 27, respectively, shall, till such Statutes and Ordinances are made, be governed, *mutatis mutandis*, by the corresponding provisions in force immediately before the commencement of this Act.”.

Transitional
provisions in
respect of
Institutes of
Second
Schedule.

17. Notwithstanding anything contained in this Act—

(a) the Board of every Institute specified in the Second Schedule functioning as such immediately before the commencement of this Act shall continue to so function until a new Board is constituted for that Institute under this Act, but on the constitution of a new Board under this Act, members of the Board holding office before such constitution shall cease to hold office;

(b) every Senate constituted in relation to every Institute before the commencement of this Act shall be deemed to be the Senate constituted under this Act unless a Senate is constituted under this Act for that Institute but on the constitution of new Senate under this Act, members of the Senate holding office before such constitution shall cease to hold office.

Power to
remove
difficulties.

18. (1) If any difficulty arises in giving effect to the provisions of the National Institutes of Technology (Amendment) Act, 2012, the Central Government may, by

order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

19. (1) The Schedule to the principal Act shall be numbered as the First Schedule and in the First Schedule as so numbered, after Sl. No. 20 and the entries relating thereto, the following shall be inserted, namely:—

Amendment
of Schedule.

"21. National Institute of Technology, Goa, Society	National Institute of Technology, Goa.
22. National Institute of Technology, Puducherry Society	National Institute of Technology, Puducherry.
23. National Institute of Technology, Delhi Society	National Institute of Technology, Delhi
24. National Institute of Technology, Sumari (Srinagar), Uttarakhand Society	National Institute of Technology, Uttarakhand.
25. National Institute of Technology, Sohra (Meghalaya) Society	National Institute of Technology, Meghalaya
26. National Institute of Technology, Mizoram Society	National Institute of Technology, Mizoram
27. National Institute of Technology, Manipur Society	National Institute of Technology, Manipur.
28. National Institute of Technology, Nagaland Society	National Institute of Technology, Nagaland
29. National Institute of Technology, Arunachal Pradesh Society	National Institute of Technology, Arunachal Pradesh
30. National Institute of Technology, Sikkim	National Institute of Technology, Sikkim."

(2) After the First Schedule as so numbered, the following Schedule shall be inserted, namely:—

"THE SECOND SCHEDULE

[See sections 3(g), (m), 4(1) and 11A]

LIST OF INDIAN INSTITUTES OF SCIENCE EDUCATION RESEARCH

Sl. No.	Society	Corresponding Institute
1	2	3
1.	Indian Institute of Science Education and Research, Kolkata Society	Indian Institute of Science Education and Research, Kolkata.
2.	Indian Institute of Science Education and Research, Pune Society	Indian Institute of Science Education and Research, Pune
3.	Indian Institute of Science Education and Research, Mohali Society	Indian Institute of Science Education and Research, Mohali.
4.	Indian Institute of Science Education and Research, Bhopal Society	Indian Institute of Science Education and Research, Bhopal
5.	Indian Institute of Science Education and Research, Thiruvananthapuram Society	Indian Institute of Science Education and Research, Thiruvananthapuram."

Sd/-

V. K. BHASIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,

Secretary to Government



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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 26th July, 2013.

No. RPB/16-2013/Act-29-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 7th June, 2012/ Jaistha 17, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 7th June, 2012 is hereby published for general information:-

THE ANAND MARRIAGE (AMENDMENT) ACT, 2012

AN

(Act No. 29 of 2012)

ACT

[7th June, 2012]

further to amend the Anand Marriage Act, 1909.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows :-

1. (1) This Act may be called the Anand Marriage (Amendment) Act, 2012.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

7 of 1909.

2. In section 2 of the Anand Marriage Act, 1909 (hereinafter referred to as the principal Act), after the words "the Sikh Marriage ceremony called Anand", the words "(commonly known as Anand Karaj)" shall be inserted.

Amendment of section 2.

3. After section 5 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 6.

"6. (1) For the purposes of facilitation of proof of marriage ceremony (commonly known as Anand Karaj) customary among the Sikhs, the State Government shall, without prejudice to anything contained in the Hindu Marriage Act, 1955 or any other law for the time being in force, make rules providing that the parties to any such marriage [whether solemnized before or after the commencement of the Anand Marriage (Amendment) Act, 2012], may have the particulars relating to their marriage entered, in such manner and subject to such conditions as may be provided in the said rules, in a Marriage Register kept by such officer of the

Registration of marriages.

25 of 1955.

State Government or of a local authority authorised by the State Government, by notification in the Official Gazette, in this behalf.

(2) The Marriage Register shall, at all reasonable times, be open for inspection, and shall be admissible as evidence of the statements contained therein and certified extracts therefrom shall, on an application, be given by the Registrar to the parties to the marriage on payment of such fees as may be provided in the rules.

(3) Notwithstanding anything contained in this section, the validity of any Anand Marriage solemnized shall in no way be affected by the omission to make an entry in the Marriage Register.

(4) Every rule made by the State Government under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(5) The parties to the marriage, whose marriage has been registered under this Act, shall not be required to get their marriage registered under any other law for the time being in force (including State Act)."

Sd/-

V. K. BHASIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,

Secretary to Government.



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PART - VI

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Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 26th July, 2013.

No. RPB/17-2013/Act.-30-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 19th June, 2012/Jaistha 29, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 19th June, 2012 is hereby published for general information:-

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION (AMENDMENT) ACT, 2012

AN

(Act No. 30 of 2012)

ACT

[19th June, 2012]

to amend the Right of Children to Free and Compulsory Education Act, 2009.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Right of Children to Free and Compulsory Education (Amendment) Act, 2012.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

35 of 2009.

2. In the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the principal Act), in section 1, after sub-section (3), the following sub-sections shall be inserted, namely:—

Amendment
of section 1.

“(4) Subject to the provisions of articles 29 and 30 of the Constitution, the provisions of this Act shall apply to conferment of rights on children to free and compulsory education.

(5) Nothing contained in this Act shall apply to Madrasas, Vedic Pathshalas and educational institutions primarily imparting religious instruction.”

Amendment
of section 2.

3. In the principal Act, in section 2,—

(a) in clause (d), after the word "means", the words "a child with disability or" shall be inserted;

(b) after clause (e), the following clause shall be inserted, namely:—

'(ee) "child with disability" includes,—

(A) a child with "disability" as defined in clause (f) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;

1 of 1996.

(B) a child, being a person with disability as defined in clause (f) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;

44 of 1999.

(C) a child with "severe disability" as defined in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

44 of 1999.

Amendment
of section 3.

4. In section 3 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

(b) in sub-section (2), the proviso shall be omitted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

'(3) A child with disability referred to in sub-clause (4) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

1 of 1996.

Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 may also have the right to opt for home-based education.

44 of 1999.

Amendment
of section 21.

5. In section 21 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that the School Management Committee constituted under sub-section (1) in respect of,—

(a) a school established and administered by minority whether based on religion or language; and

(b) all other aided schools as defined in sub-section (ii) of clause (n) of section 2,

shall perform advisory function only."

Amendment
of section 22.

6. In section 22 of the principal Act, in sub-section (1), for the words "School Management Committee, constituted", the words "School Management Committee, except the School Management Committee in respect of a school established and administered by minority, whether based on religion or language and an aided school as defined in sub-clause (ii) of clause (n) of section 2, constituted" shall be substituted.

7. In section 25 of the principal Act, in sub-section (1), for the words "Within six months", the words "Within three years" shall be substituted. Amendment of section 25.

8. After section 38 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 39.

"39. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty: Power of Central Government to remove difficulties.

Provided that no order shall be made under this section after the expiry of three years from the commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2012.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

Sd/-

V. K. BHASIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,

Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

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Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 26th July, 2013.

No. RPB/18-2013/Act.-31-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 19th June, 2012 / Jaistha 29, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 19th June, 2012, is hereby published for general information:-

THE CENTRAL EDUCATION INSTITUTIONS (RESERVATION IN ADMISSION) AMENDMENT ACT, 2012

AN

(Act No. 31 of 2012)

ACT

[19th June, 2012]

to amend the Central Education Institutions (Reservation in Admission) Act, 2006.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follow:-

1. This Act may be called Central Educational Institutions (Reservation in Short title. Admission) Amendment Act, 2012.

5 of 2007

2. In section 2 of the Central Educational Institutions (Reservation in Admission) Act, 2006. (hereinafter referred to as the principal Act), after clause (i), the following clauses shall be inserted, namely:-

"(ia) "specified north-eastern region" means the area comprising of the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and the tribal areas of Assam referred to in the Sixth Schedule to the Constitution;

"(ib) "State seats", in relation to a Central Educational Institutions, means such seats, if any, out of the annual permitted strength in each branch of study or faculty as are earmarked to be filled from amongst the eligible students of the State in which such institution is situated;".

Amendment
of section 3.

3. In section 3 of the principal Act, the following provisos shall be inserted, namely:—

"Provided that the State seats, if any, in a Central Educational Institution situated in the tribal areas referred to in the Sixth Schedule to the Constitution shall be governed by such reservation policy for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes, as may be specified, by notification in the Official Gazette, by the Government of the State where such institution is situated:

Provided further that if there are no State seats in a Central Educational Institution and the seats reserved for the Scheduled Castes exceed the percentage specified under clause (i) or the seats reserved for the Scheduled Tribes exceed the percentage specified under clause (ii) or the seats reserved for the Scheduled Castes and the Scheduled Tribes taken together exceed the sum of percentages specified under clauses (i) and (ii), but such seats are—

(a) less than fifty per cent, of the annual permitted strength on the date immediately preceding the date of commencement of this Act, the total percentage of the seats required to be reserved for the Other Backward Classes under clause (iii) shall be restricted to the extent such sum of percentages specified under clauses (i) and (ii) falls short of fifty per cent, of the annual permitted strength;

(b) more than fifty per cent, of the annual permitted strength on the date immediately preceding the date of commencement of this Act, in that case no seat shall be reserved for the Other Backward Classes under clause (iii) but the extent of the reservation of seats for the Scheduled Castes and the Scheduled Tribes shall not be reduced in respect of Central Educational Institutions in the specified north-eastern region."

Amendment
of section 4.

4. In section 4 of the principal Act, clause (a) shall be omitted.

Amendment
of section 5.

5. In section 5 of the principal Act,—

(a) in sub-section (1), for the words "number of such seats available", the words "number of such seats available or actually filled, whichever be less," shall be substituted;

(b) in sub-section (2), for the words "three years", the words "six years" shall be substituted.

Amendment
of section 6.

6. In section 6 of the principal Act, for the figures "2007", the figures "2008" shall be substituted.

Sd/-

V. K. BHASIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,

Secretary to Government.



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PART - VI

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Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar,

Dated the 26th July, 2013.

No. RPB/19-2013/Act.-32-12-/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 19th June, 2012/Jaistha 29, 1934(Sake).

The following Act of Parliament has received the assent of the President on the 19th June, 2012 is hereby published for general information :-

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES

ACT, 2012

(Act No. 32 of 2012)

[19th June, 2012]

An
Act

to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

WHEREAS clause (3) of article 15 of the Constitution, *inter alia*, empowers the State to make special provisions for children;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

AND WHEREAS it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

AND WHEREAS it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

AND WHEREAS the State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent—

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

AND WHEREAS sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commencement.

1. (1) This Act may be called the Protection of Children from Sexual Offences Act, 2012.
- (2) It extends to the whole of India, except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. (1) In this Act, unless the context otherwise requires, —

(a) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;

(b) "aggravated sexual assault" has the same meaning as assigned to it in section 9;

(c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;

(d) "child" means any person below the age of eighteen years;

(e) "domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005;

43 of 2005.

(f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988;

41 of 1988.

(i) "sexual assault" has the same meaning as assigned to it in section 7;

(j) "sexual harassment" has the same meaning as assigned to it in section 11;

(k) "shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;

(l) "Special Court" means a court designated as such under section 28;

(m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.

(2) The words and expressions used herein and not defined but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meanings respectively assigned to them in the said Codes or the Acts.

45 of 1860.
2 of 1974.
56 of 2000.
21 of 2000.

CHAPTER II

SEXUAL OFFENCES AGAINST CHILDREN

A.—PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Penetrative
sexual assault.

3. A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

4. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment
for
penetrative
sexual assault.

B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

5. (a) Whoever, being a police officer, commits penetrative sexual assault on a child —

Aggravated
penetrative
sexual assault.

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation.—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated penetrative sexual assault.

Punishment
for aggravated
penetrative
sexual assault.

6. Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

C.—SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Sexual assault.

7. Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

8. Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

Punishment for sexual assault.

D.—AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR

9. (a) Whoever, being a police officer, commits sexual assault on a child—

Aggravated sexual assault.

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Explanation.—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated sexual assault.

Punishment
for aggravated
sexual assault.

10. Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

E.—SEXUAL HARASSMENT AND PUNISHMENT THEREFOR

Sexual
harassment.

11. A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves "sexual intent" shall be a question of fact.

Punishment
for sexual
harassment.

12. Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

CHAPTER III

USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

Use of child for
pornographic
purposes.

13. Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

(a) representation of the sexual organs of a child;

(b) usage of a child engaged in real or simulated sexual acts (with or without penetration);

(c) the indecent or obscene representation of a child,
shall be guilty of the offence of using a child for pornographic purposes.

Explanation.—For the purposes of this section, the expression “use a child” shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

14. (1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine.

Punishment for using child for pornographic purposes.

(2) If the person using the child for pornographic purposes commits an offence referred to in section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.

(4) If the person using the child for pornographic purposes commits an offence referred to in section 7, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine.

(5) If the person using the child for pornographic purposes commits an offence referred to in section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.

15. Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

Punishment for storage of pornographic material involving child.

CHAPTER IV

ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

16. A person abets an offence, who—

First.—Instigates any person to do that offence; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that offence.

Abetment of an offence.

Explanation I.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.—Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.—Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

17. Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Punishment for abetment.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

18. Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case

Punishment for attempt to commit an offence.

may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.

CHAPTER V

PROCEDURE FOR REPORTING OF CASES

Reporting of offences.

19. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

(2) Every report given under sub-section (1) shall be—

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

Obligation of media, studio and photographic facilities to report cases.

20. Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

Punishment for failure to report or record a case.

21. (1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

Punishment for false complaint or false information.

22. (1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimising such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.

23. (1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

Procedura for media.

(2) No reports in any media shall disclose the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:

Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

CHAPTER VI

PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

24. (1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

Recording of statement of a child.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

2 of 1974.

25. (1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Recording of statement of a child by Magistrate.

Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

26. (1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

Additional provisions regarding statement to be recorded.

(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

Medical examination of a child.

27. (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973.

2 of 1974.

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

CHAPTER VII

SPECIAL COURTS

Designation of Special Courts.

28. (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

4 of 2006.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

21 of 2000.

Presumption as to certain offences.

29. Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

Presumption of culpable mental state.

30. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.

31. Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

2 of 1974.

32. (1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act. Special Public Prosecutors.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly. 2 of 1974.

CHAPTER VIII

PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

33. (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts. Procedure and powers of Special Court.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial.

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation.—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session. 2 of 1974.

34. (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. 56 of 2000.

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination. Procedure in case of commission of offence by child and determination of age by Special Court.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

Period for recording of evidence of child and disposal of case.

35. (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

Child not to see accused at the time of testifying.

36. (1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

Trials to be conducted in camera.

37. The Special Court shall try cases *in camera* and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973.

2 of 1974.

Assistance of an interpreter or expert while recording evidence of child.

38. (1) Wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

CHAPTER IX

MISCELLANEOUS

Guidelines for child to take assistance of experts, etc.

39. Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

Right of child to take assistance of legal practitioner.

40. Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act: 2 of 1974.

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

Provisions of sections 3 to 13 not to apply in certain cases.

41. The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

Alternative punishment.

42. Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.

43. The Central Government and every State Government, shall take all measures to ensure that—

Public awareness about Act.

(a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;

(b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

4 of 2006.

44. (1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

Monitoring of implementation of Act.

4 of 2006.

(2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005.

4 of 2006.

(3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005.

45. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the qualifications and experience of, and the fees payable to, a translator or an interpreter, a special educator or any person familiar with the manner of communication of the child or an expert in that field, under sub-section (4) of section 19; sub-sections (2) and (3) of section 26 and section 38;

(b) care and protection and emergency medical treatment of the child under sub-section (5) of section 19;

(c) the payment of compensation under sub-section (8) of section 33;

(d) the manner of periodic monitoring of the provisions of the Act under sub-section (1) of section 44.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

46. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(c)]

ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER

- (a) The Air Force Act, 1950 (45 of 1950);
- (b) The Army Act, 1950 (46 of 1950);
- (c) The Assam Rifles Act, 2006 (47 of 2006);
- (d) The Bombay Home Guard Act, 1947 (3 of 1947);
- (e) The Border Security Force Act, 1968 (47 of 1968);
- (f) The Central Industrial Security Force Act, 1968 (50 of 1968);
- (g) The Central Reserve Police Force Act, 1949 (66 of 1949);
- (h) The Coast Guard Act, 1978 (30 of 1978);
- (i) The Delhi Special Police Establishment Act, 1946 (25 of 1946);
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992);
- (k) The Navy Act, 1957 (62 of 1957);
- (l) The National Investigation Agency Act, 2008 (34 of 2008);
- (m) The National Security Guard Act, 1986 (47 of 1986);
- (n) The Railway Protection Force Act, 1957 (23 of 1957);
- (o) The Sashastra Seema Bal Act, 2007 (53 of 2007);
- (p) The Special Protection Group Act, 1988 (34 of 1988);
- (q) The Territorial Army Act, 1948 (56 of 1948);
- (r) The State police forces (including armed constabulary) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of section 2 of the Armed Forces (Special Powers) Act, 1958 (28 of 1958).

Sd/-

V. K. Bhasin ,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. Gothi ,
Secretary to Government .



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. LIV]

MONDAY, JULY 29, 2013/SRAVANA 7, 1935

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department
Sachivalaya, Gandhinagar, 29th July, 2013.

No. RPB/20-2013/Act.-33-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 19th June, 2012 / Jaistha 29, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 19th June, 2012 is hereby published for general information:-

THE ADMINISTRATORS-GENERAL (AMENDMENT) ACT, 2012

AN

(Act No. 33 of 2012)

ACT

[19th June, 2012]

further to amend the Administrators-General Act, 1963.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Administrators-General (Amendment) Act, 2012. Short title and commencement.
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 9, 10, 29 and 36 of the Administrators-General Act, 1963, for the words "two lakhs", wherever they occur, the words "ten lakhs" shall be substituted. Amendment of section 9, 10, 29 and 36 of Act 45 of 1963.

Sd/-

V. K. BHASIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,

Secretary to Government.

Government Central Press, Gandhinagar.



सत्यमेव जयते

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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department
Sachivalaya, Gandhinagar
Dated the 29 July, 2013.

No.RPB/21-2013/Act-34-12/E:- The following Act of Parliament is republished for general information:-

Government of India
Ministry of Law and Justice
Legislative Department

New Delhi, the 21st June, 2012/Jaistha, 31, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 20th June, 2012 is hereby published for general information:-

THE INSTITUTES OF TECHNOLOGY (AMENDMENT) ACT, 2012

(Act No. 34 of 2012)

[20th June, 2012]

An
Act

further to amend the Institutes of Technology Act, 1961

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Institutes of Technology (Amendment) Act, 2012.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Institutes of Technology Act, 1961 (hereinafter referred to as the principal Act), in section 2, for the words "and the Institutes of Technology, Roorkee", the words "the Institutes of Technology, Roorkee, the Institutes of Technology, Bhubaneswar, the Institutes of Technology, Gandhi Nagar, the Institutes of Technology, Hyderabad, the Institutes of Technology, Indore, the Institutes of Technology, Jodhpur, the Institutes of Technology, Mandi, the Institutes of Technology, Patna, the Institutes of Technology, Ropar and the Institutes of Technology (Banaras Hindu University), Varanasi" shall be substituted.

Amendment of
section 2.

Amendment
of section 3.

3. In section 3 of the principal Act,—

(a) in clause (c), after sub-clause (iv), the following sub-clauses shall be inserted, namely:—

“(v) in relation to the society known as the Indian Institute of Technology, Bhubaneswar, the Indian Institute of Technology, Bhubaneswar;

(vi) in relation to the society known as the Indian Institute of Technology, Gandhinagar, the Indian Institute of Technology, Gandhinagar;

(vii) in relation to the society known as the Indian Institute of Technology, Hyderabad, the Indian Institute of Technology, Hyderabad;

(viii) in relation to the society known as the Indian Institute of Technology, Indore, the Indian Institute of Technology, Indore;

(ix) in relation to the society known as the Indian Institute of Technology, Rajasthan, the Indian Institute of Technology, Jodhpur;

(x) in relation to the society known as the Indian Institute of Technology, Mandi, the Indian Institute of Technology, Mandi;

(xi) in relation to the society known as the Indian Institute of Technology, Patna, the Indian Institute of Technology, Patna;

(xii) in relation to the society known as the Indian Institute of Technology, Punjab, the Indian Institute of Technology, Ropar;

(xiii) in relation to the Institute of Technology, Banaras Hindu University, referred to in Statute 25(A)(1) of the Statutes set out in the Schedule to the Banaras Hindu University Act, 1915, the Indian Institute of Technology (Banaras Hindu University), Varanasi;”

16 of 1915.

(b) after clause (g), the following clause shall be inserted, namely:—

“(ga) ‘Institute of Technology, Banaras Hindu University’ means the Institute of Technology, Banaras Hindu University, referred to in Statute 25(A)(1) of the Statutes set out in the Schedule to the Banaras Hindu University Act, 1915;”

16 of 1915.

(c) in clause (j), after sub-clause (iii), the following sub-clauses shall be inserted, namely:—

“(iv) the Indian Institute of Technology, Bhubaneswar;

(v) the Indian Institute of Technology, Gandhinagar;

(vi) the Indian Institute of Technology, Hyderabad;

(vii) the Indian Institute of Technology, Indore;

(viii) the Indian Institute of Technology, Rajasthan;

(ix) the Indian Institute of Technology, Mandi;

(x) the Indian Institute of Technology, Patna;

(xi) the Indian Institute of Technology, Punjab;”

(d) after clause (l), the following clause shall be inserted, namely:—

“(m) ‘zone’, in relation to an Institute, means such group of States and Union territories as the Central Government may, by notification in the Official Gazette, specify.”

4. In section 4 of the principal Act, after sub-section (IC), the following sub-section shall be inserted, namely:—

Amendment
of section 4.

“(ID) The Institute of Technology, Banaras Hindu University shall, on such incorporation, be called the Indian Institute of Technology (Banaras Hindu University), Varanasi.”

5. In section 5 of the principal Act, the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

Amendment
of section 5.

“*Explanation 2.*—The reference in this section to the commencement of this Act shall be construed in relation to the Indian Institute of Technology, Bhubaneswar, the Indian Institute of Technology, Gandhinagar, the Indian Institute of Technology, Hyderabad, the Indian Institute of Technology, Indore, the Indian Institute of Technology, Jodhpur, the Indian Institute of Technology, Mandi, the Indian Institute of Technology, Patna and the Indian Institute of Technology, Ropar, as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Act, 2012 come into force.”

6. After section 5A of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section 5B.

“5B. On and from the commencement of the Institutes of Technology (Amendment) Act, 2012,—

Effect of
incorporation
of Indian
Institute of
Technology
(Banaras Hindu
University),
Varanasi.

(a) any reference to the Institute of Technology, Banaras Hindu University in any law for the time being in force (other than this Act) or in any contract or other instrument shall be deemed as a reference to the Indian Institute of Technology (Banaras Hindu University), Varanasi;

(b) all property, movable and immovable, of or belonging to the Institute of Technology, Banaras Hindu University, shall vest in the Indian Institute of Technology (Banaras Hindu University), Varanasi;

(c) all rights and liabilities of the Institute of Technology, Banaras Hindu University shall be transferred to, and be the rights and liabilities of, the Indian Institute of Technology (Banaras Hindu University), Varanasi;

(d) every person employed in the Institute of Technology, Banaras Hindu University immediately before such commencement shall hold his office or service in the Indian Institute of Technology (Banaras Hindu University), Varanasi by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been passed and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the Indian Institute of Technology (Banaras Hindu University), Varanasi in accordance with the terms of the contract with the employee or, if no provision is made therein in this behalf, on payment to him by the Indian Institute of Technology (Banaras Hindu University), Varanasi of compensation equivalent to three months' remuneration in the case of permanent employees and one month's remuneration in the case of other employees:

Provided further that any reference, by whatever form of words, to the Director of the Institute of Technology, Banaras Hindu University in any law for the time being in force, or in any instrument or other document, shall be construed as a reference to the Director of the Indian Institute of Technology (Banaras Hindu University), Varanasi; and

(e) on the commencement of the Institutes of Technology (Amendment) Act, 2012,—

(i) the Vice-Chancellor of the Banaras Hindu University, appointed under the provisions of the Banaras Hindu University Act, 1915 shall be deemed to have been appointed as *ex officio* Chairman of the Board of Governors of the Indian Institute of Technology (Banaras Hindu University), Varanasi under this Act, and shall hold office for a period of three years with effect from such commencement;

16 of 1915.

(ii) the Director of the Institute of Technology, Banaras Hindu University, appointed under the provisions of the Banaras Hindu University Act, 1915 shall be deemed to have been appointed as Director of the Indian Institute of Technology (Banaras Hindu University), Varanasi under this Act, and shall hold his office till Director is appointed under this Act.

16 of 1915.

Explanation.—The reference in this section to the commencement of this Act shall be construed in relation to the Indian Institute of Technology (Banaras Hindu University), Varanasi as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Act, 2012 come into force.”

Amendment of section 6. 7. In section 6 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) subject to the provisions of this Act, every Institute may strive to meet the technological needs of the States and the Union territories included in its zone by—

(a) supporting and collaborating with technical education institutions located in the zone with a view to enhance their quality and capability;

(b) advising the State Governments and the Union territories included in its zone in the matter of technical education and any technological issue referred by them to the Institute for advice.”

Amendment of section 11.

8. In section 11 of the principal Act,—

(i) after clause (e), the following proviso shall be inserted, namely:—

“Provided that in the case of the Indian Institute of Technology (Banaras Hindu University), Varanasi,—

(a) the Board of such Institute shall consist of Vice-Chairman to be nominated, after a period of three years from the commencement of the Institutes of Technology (Amendment) Act, 2012, by the Executive Council referred to in clause (d) of section 2 of the Banaras Hindu University Act, 1915, from amongst its members including its Vice-Chancellor;”

16 of 1915.

(b) four persons to be nominated under clause (a), out of which two persons to be nominated by the Executive Council referred to in clause (d) of section 2 of the Banaras Hindu University Act, 1915, from amongst its members including its Vice-Chancellor;”

16 of 1915.

(ii) the *Explanation* shall be omitted.

9. In section 14 of the principal Act, after clause (e), the following proviso shall be inserted, namely:—

Amendment of section 14.

16 of 1915.

“Provided that in case of the Indian Institute of Technology (Banaras Hindu University), Varanasi, three members shall be nominated by the Executive Council referred to in clause (d) of section 2 of the Banaras Hindu University Act, 1915.”

10. In section 38 of the principal Act,—

Amendment of section 38.

(a) after clause (i), the following clauses shall be inserted, namely:—

“(f) until the first Statutes and Ordinances in relation to the Indian Institute of Technology, Bhubaneswar, the Indian Institute of Technology, Gandhinagar, the Indian Institute of Technology, Hyderabad, the Indian Institute of Technology, Indore, the Indian Institute of Technology, Jodhpur, the Indian Institute of Technology, Mandi, the Indian Institute of Technology, Patna and the Indian Institute of Technology, Ropar are made under this Act, the Statutes and Ordinances of such Institute, as in force immediately before the commencement of the Institutes of Technology (Amendment) Act, 2012, shall apply to those Institutes with necessary modifications and adaptations in so far as they are not inconsistent with the provisions of this Act;

16 of 1915.

(k) the Executive Council, referred to in clause (d) of section 2 of the Banaras Hindu University Act, 1915, functioning as such immediately before the commencement of the Institutes of Technology (Amendment) Act, 2012, shall continue to so function until a new Board is constituted for the Indian Institute of Technology (Banaras Hindu University), Varanasi under this Act, but on the constitution of a new Board under this Act, the Executive Council of the Banaras Hindu University shall cease to function so far as the Indian Institute of Technology (Banaras Hindu University), Varanasi is concerned;

16 of 1915.

(l) the Academic Council, referred to in clause (a) of section 2 of the Banaras Hindu University Act, 1915, functioning as such immediately before the commencement of the Institutes of Technology (Amendment) Act, 2012 shall continue to so function until a new Senate is constituted for the Indian Institute of Technology (Banaras Hindu University), Varanasi under this Act, but on the constitution of a new Senate under this Act, the Academic Council of the Banaras Hindu University shall cease to function so far as the Indian Institute of Technology (Banaras Hindu University), Varanasi;

(m) until the first Statutes and the Ordinances in relation to the Indian Institute of Technology (Banaras Hindu University), Varanasi are made under this Act, the Statutes and Ordinances as are applicable to the Indian Institute of Technology, Kanpur immediately before the commencement of the Institutes of Technology (Amendment) Act, 2012, shall apply to the Indian Institute of Technology (Banaras Hindu University), Varanasi with the necessary modifications and adaptations in so far as they are not inconsistent with the provisions of this Act;

(n) notwithstanding anything contained in the Institutes of Technology (Amendment) Act, 2012, any student who joined classes of the Institute of Technology, Banaras Hindu University on or after the commencement of 2006-2007 academic session or completed the courses on or after 2009-2010 academic session shall for the purpose of clause (b) of sub-section (1) of section 6, be deemed to have pursued a course of study in the Indian Institute of Technology (Banaras Hindu University), Varanasi provided that such student has not already been awarded degree or diploma for the same course of study;

(o) if any difficulty arises in giving effect to the provisions of the Institutes of Technology (Amendment) Act, 2012, the Central Government

may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this clause after the expiry of two years from the commencement of the Institutes of Technology (Amendment) Act, 2012:

Provided further that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.”:

(b) after *Explanation 2*, the following *Explanation* shall be inserted, namely:—

“*Explanation 3*.— The reference in clauses (k), (l) and (m) of this section to the commencement of this Act shall be construed in relation to the Indian Institute of Technology (Banaras Hindu University), Varanasi, as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Act, 2012 come into force.”.

Sd/-

V. K. Bhasin,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. Gothi,

Secretary to Government

Government Central Press, Gandhinagar.



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department
Sachivalaya, Gandhinagar

Dated the 29th July, 2013.

No. RPB/22-2013/Act-35-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 31st August, 2012/Bhadra 9, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 30th August, 2012, is hereby published for general information:-

THE RAJIV GANDHI NATIONAL INSTITUTE OF YOUTH DEVELOPMENT ACT, 2012

(Act, No.35 of 2012)

An
Act

[30th August, 2012]

to declare the institution known as the Rajiv Gandhi National Institute of Youth Development, to be an institution of national importance and to provide for its incorporation and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Rajiv Gandhi National Institute of Youth Development Act, 2012. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Declaration
of Rajiv
Gandhi
National
Institute of
Youth
Development
as an
institution of
national
importance.

2. Whereas the objects of the institution known as the Rajiv Gandhi National Institute of Youth Development are such as to make the institution one of national importance, it is hereby declared that the institution known as the Rajiv Gandhi National Institute of Youth Development is an institution of national importance.

Definitions.

3. In this Act, unless the context otherwise requires,—

(a) "Academic Council" means the Academic Council of the Institute;

(b) "appointed day" means the date appointed under sub-section (2) of section 1 for coming into force of this Act;

(c) "Chairperson" means a Chairperson to the Executive Council referred to in clause (a) of sub-section (2) of section 12;

(d) "Director" means the Director of the Institute referred to in clause (a) of section 21;

(e) "Executive Council" means the Executive Council of the Institute established under section 12;

(f) "existing Institute" means the Rajiv Gandhi National Institute of Youth Development, Sriperumbudur, established under the provisions of the Society Registration Act, 1860 and declared as deemed to be a University under section 3 of the University Grants Commission Act, 1956, and which is in existence immediately before the commencement of this Act;

(g) "Fund" means the fund of the Institute to be maintained under section 26;

(h) "Institute" means the Rajiv Gandhi National Institute of Youth Development incorporated under section 4;

(i) "notification" means the notification published in the Official Gazette;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "Registrar" means the Registrar of the Institute referred to in section 23;

(l) "Statutes" and "Ordinances" mean the Statutes and Ordinances of the Institute made under this Act.

CHAPTER II

RAJIV GANDHI NATIONAL INSTITUTE OF YOUTH DEVELOPMENT

Incorporation
of Institute.

4. (1) The Rajiv Gandhi National Institute of Youth Development shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and shall, by that name, sue and be sued.

(2) The first Chairperson, the first Director and the first members of the Executive Council and the Academic Council, and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, shall constitute the Institute.

(3) The headquarters of the Institute shall be in the district of Kanchipuram, in the State of Tamil Nadu.

(4) The Institute may establish and maintain centres at such other places in India as it may deem fit.

5. On and from the appointed day and subject to other provisions of this Act,—

Effect of
establishment
of Institute.

(a) any reference to the existing Institute in any contract or other instrument shall be deemed as a reference to the Institute;

(b) all property, movable and immovable, of or belonging to the existing Institute shall vest in the Institute;

(c) all rights and liabilities of the existing Institute shall be transferred to, and be the rights and liabilities of, the Institute; and

(d) every person employed by the existing Institute immediately before the appointed day shall hold office or service in the Institute by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the Institute in accordance with the terms of the contract with the employee or, if no provision is made therein in this behalf, on payment to him by the Institute a compensation equivalent to three months' remuneration in the case of permanent employees and one month's remuneration in the case of other employees.

6. The objects of the Institute shall be,—

Objects of
Institute.

(a) to evolve and achieve an integrated approach to youth development for preparing and empowering the youth for the future, by—

(i) providing action oriented research inputs for policy formulation;

(ii) implementation of policy through extension and other programmes;

(iii) promoting assessment and impact study and conducting teaching, training and other academic programmes;

(b) to set up advanced National Youth Resource Centre commensurate with the international standards to provide for comprehensive and scientifically analysed data on all youth-related issues and matters, with adequate library facility, documentation and publication;

(c) to provide for research and development and dissemination of knowledge through extension and outreach programmes;

(d) to act as a nodal agency for capacity building of stakeholders including youth bodies, organisations and agencies relating to youth;

(e) to empower youth to participate in inclusive development and nation building;

(f) to evolve as an institute of advanced study in the field of youth and to develop such professional excellence as may be required for the purpose;

(g) to provide for higher education in the field of youth development through employment-oriented and inter-disciplinary courses at the post graduate level.

7. (1) Without prejudice to the provisions contained in section 6, the Institute shall,—

Functions of
Institute.

(a) develop a "think tank" by way of carrying out policy research, evaluation and impact analysis on youth programmes and issues of contemporary and future relevance;

(b) function as a repository of knowledge pertaining to data on youth;

(c) develop documentation, information and publication services for youth training and extension;

(d) provide technical advice and consultancy for formulation of youth related policy and promotion of youth programme;

(e) build the professional capacity of youth organisations, both in Government and voluntary sector;

- (f) design, develop and conduct appropriate training and orientation programmes;
- (g) conduct seminars, workshops and conferences on issues relating to youth;
- (h) set up centres for dissemination of academic and training programmes;
- (i) collaborate with national and international university, centres, institutes and such other agencies relating to youth training and youth development;
- (j) establish programmes of study and research and to provide for instruction in such branches of study as the institute deems appropriate;
- (k) award, subject to such conditions as the Institute may determine, degrees, diplomas, certificates or other academic distinctions or titles at various academic levels;
- (l) confer honorary degrees or other distinction awards, fellowships, scholarships, prizes and medals;
- (m) determine, demand and receive fees and other charges for its courses, programmes and other matters;
- (n) conduct and coordinate projects and studies relating to youth sponsored by the Government of India and other developmental agencies;
- (o) create with the prior approval of the Central Government, academic, technical, administrative, managerial and other posts in the Institute and make appointments thereto in accordance with the rules and regulations of the Institute;
- (p) regulate the conduct of the affairs of the Institute;
- (q) supervise and control the discipline of all categories of employees and students of the Institute;
- (r) purchase, hire, lease, exchange or acquire property, movable or immovable and to construct, alter and maintain any building or buildings as may be necessary;
- (s) set up distance learning or education centres, in collaboration with Open Universities, to provide access to the aspiring young professionals enabling them to take up a career in the field of youth development;
- (t) establish, maintain and manage halls of residences and hostels for students;
- (u) lay down conditions of service including a code of conduct for teachers and other categories of employees;
- (v) supervise, control and regulate the discipline of students of the Institute and to make arrangements for promoting their health and general welfare;
- (w) coordinate student exchange programmes with reputed International Youth Development Institutions;
- (x) undertake, assist and promote all such activities conducive or incidental to the attainment of the objectives.

(2) The Institute may receive gifts, grants, donations or benefactions from the Government and to receive bequests, donations and transfers of movable or immovable properties from the testators, donors or transferors, as the case may be.

(3) The Institute may enter into agreements with international organisations, institutions and universities to broaden the scope of the youth work and to facilitate knowledge development and participatory learning.

8. (1) The Institute shall be open to persons of either sex and of whatever race, creed, caste or class, physical ability, and no test or condition shall be imposed as to religious belief or profession in admitting students, appointing teachers or employees or in any other connection whatsoever.

(2) No bequest, donation or transfer of any property shall be accepted by the Institute which in the opinion of the Executive Council involves conditions or obligations opposed to the spirit and object of this section.

9. All teaching and other academic activities at the Institute shall be conducted by or in the name of the Institute in accordance with the Statutes and Ordinances made in this behalf.

Institute to be open to all races, creeds, gender and classes.

Teaching at Institute.

10. (1) The President of India shall be the Visitor of the Institute:

Visitor.

Provided that the President may, by order, nominate any person to be the Visitor and such person so nominated shall hold office for such term, not exceeding five years as may be specified in the order and the person so nominated shall exercise the powers and discharge

5 duties of the Visitor.

(2) The Visitor may, from time to time, appoint one or more persons to review the work and progress of the Institute and to hold inquiries into the affairs thereof and to report thereon in such manner as the Visitor may direct.

(3) Upon receipt of any such report, the Visitor may take such action and issue such

10 directions as he considers necessary in respect of any of the matters dealt with in the report and the Institute shall be bound to comply with such directions within reasonable time.

CHAPTER III

AUTHORITIES OF THE INSTITUTE

11. The Institute shall consist of the following authorities, namely:—

Authorities of
Institute.

15 (a) the Executive Council;

(b) the Academic Council; and

(c) such other authorities as may be declared by the Statutes to be the authorities of the Institute.

12. (1) With effect from such date as the Central Government may, by notification,

20 appoint in this behalf, there shall be established for the purpose of this Act, a central body to be called as the Executive Council.

Establishment
of Executive
Council.

(2) The Executive Council shall consist of the following members, namely:—

(a) an eminent person of academic repute to be nominated by the Visitor—Chairperson;

25 (b) an eminent person in the field of Youth Development to be nominated by the Visitor—Vice-Chairperson;

(c) Secretary, Department of Youth Affairs, Ministry of Youth Affairs and Sports—*ex officio* Member;

30 (d) Joint Secretary, Department of Youth Affairs, Ministry of Youth Affairs and Sports—*ex officio* Member;

(e) Director, Rajiv Gandhi National Institute of Youth Development—*ex officio* Member;

(f) Professor from Rajiv Gandhi National Institute of Youth Development on rotation—Member;

35 (g) one eminent sports personality to be nominated by the Central Government—Member;

(h) one Head from an Academic Institution to be nominated by the Central Government—Member;

40 (i) one representative from the industry to be nominated by the Central Government from the Federation of Indian Chamber of Commerce and Industry or Confederation of Indian Industry by the Central Government—Member;

(j) the Registrar, Rajiv Gandhi National Institute of Youth Development—Member-Secretary.

(3) While nominating the members of the Executive Council under sub-section (2)

45 due representation shall be given to women, different regions of the country, and weaker sections of the community and differently abled persons.

13. (1) The term of office of every member of the Executive Council shall be for a period of three years from the date of his nomination:

Provided that the term of office of an *ex officio* member shall continue so long as he

50 holds the office by virtue of which he is a member.

Terms of office
of, vacancies
among, and
allowances
payable to
members of
Executive
Council.

(2) The term of office of a member nominated to fill a casual vacancy shall be for the remainder of the term of the member in whose place he has been nominated.

(3) Notwithstanding anything contained in this section, an out-going member shall, unless the Central Government otherwise directs, continue in office until another person is nominated as a member in his place or until the expiry of one year, whichever is earlier. 5

(4) The members of the Executive Council, other than *ex officio* members, shall be paid such travelling and other allowances as may be provided by the Statutes.

Meetings of
Executive
Council.

14. (1) The Chairperson shall ordinarily preside at the meetings of the Executive Council and at the Convocation of the Institute:

Provided that, in his absence, the Vice-Chairperson of the Executive Council shall preside at the meetings of the Executive Council. 10

(2) It shall be the duty of the Chairperson to ensure that the decisions taken by the Executive Council are implemented.

(3) The Chairperson shall exercise such other powers and perform such other duties as are assigned to him by this Act. 15

(4) The Executive Council shall meet at least four times in a year and follow such procedure, in its meetings (including quorum at such meetings) as may be provided by the Statutes.

Powers and
functions of
Executive
Council.

15. (1) Subject to the provisions of this Act, the Executive Council shall be responsible for the general superintendence, direction and control of the affairs of the Institute and shall also exercise the powers of the Institute not otherwise provided for by this Act, the Statutes and the Ordinances, and shall have the power to review the acts of the Academic Council and Finance Committee. 20

(2) Without prejudice to the provisions of sub-section (1), the Executive Council shall— 25

(a) take decisions on questions of policy relating to the administration and working of the Institute;

(b) lay down policy regarding the duration of the courses, nomenclature of the degrees and other distinctions to be conferred by the Institute;

(c) institute courses of study and lay down standards of proficiency and other academic distinctions in respect of the courses offered by the Institute; 30

(d) lay down, with prior approval of the Central Government, the policy regarding the cadre structure, qualification, the method of recruitment and conditions of service of the teaching and research faculty as well as other employees of the Institute;

(e) guide resource mobilisation of the Institute and to lay down policies for utilisation; 35

(f) consider and approve proposals for taking loans for purposes of the Institute with or without the security of the property of the Institute;

(g) make Statutes and to alter, modify or rescind the same;

(h) consider and pass resolutions on annual report, annual accounts and the budget estimates of the Institutes for the next financial year as it thinks fit together with a statement of its development plans; and 40

(i) do all such things, not specifically covered under clauses (a) to (h), as may be necessary, incidental or conducive to the attainment of all or any of the powers under this section. 45

(3) The Executive Council shall have the power to appoint such committees as it considers necessary for the exercise of its powers and the performance of its duties under this Act.

(4) The Executive Council may, by a specific resolution to this effect, delegate any of its powers and duties to the Chairperson, Director, any officer or any authority of the Institute subject to reserving the right to review the action that may be taken under such delegated authority.

16. (1) The Academic Council shall be the principal academic body of the Institute and shall, subject to the provisions of this Act, the Statutes and the Ordinances, co-ordinate and exercise general supervision over the academic policies of the Institute.

Academic Council.

(2) The Academic Council shall consist of the following, namely:—

- (a) Director-Chairman *ex officio*;
- (b) one head of an academic institution of national importance to be nominated by the Chairperson;
- (c) one Director from any of the Indian Institute of Technology or the Indian Institute of Management to be nominated by the Chairperson;
- (d) Member in-charge of Youth Affairs in the Planning Commission of India *ex officio*;
- (e) one person from any international non-governmental organisation working in India in the field of youth work to be nominated by the Chairperson;
- (f) two representatives from the non-governmental industrial sector to be nominated by the Chairperson;
- (g) one Professor from the Institute, on rotation basis;
- (h) Director of the Lal Bahadur Shastri National Academy of Administration, Mussoorie, *ex officio*;
- (i) two persons from non-governmental organisations working in the field of youth and adolescent development out of whom one person shall be from the north-eastern region, to be nominated by the Chairperson;
- (j) two students of the Institute out of whom one student shall be female;
- (k) three eminent academicians from among the fields of Social Science, Health Science, Agricultural Science, Skill Development, Management and Law to be nominated by the Chairperson;
- (l) one woman representative from the International Development Organisation to be nominated by the Chairperson;
- (m) an officer not below the rank of Joint Secretary to the Government of India dealing with the affairs of the Institute in the Union Ministry of Youth Affairs and Sports, *ex officio*.

(3) The term of office of members of the Academic Council and its powers shall be such as may be provided by the Statutes.

(4) While nominating the members of the Academic Council due representation shall be given to women (by including at least four women), from different regions of the country, weaker sections of the community and differently abled persons.

17. Subject to the provisions of this Act, the Statutes and the Ordinances, the Academic Council shall have the control and general regulation, and be responsible for the framing of the Ordinances, maintenance of standards of instruction, education and examination in the Institute and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes.

Functions of Academic Council.

18. (1) There shall be a Finance Committee of the Institute which shall be the principal financial body of the Institute.

Finance Committee.

(2) The Finance Committee shall consist of the following, namely:—

- (a) Director-Presiding Officer of the Finance Committee;
- (b) Joint Secretary and Financial Adviser in the Union Ministry of Youth Affairs and Sports;
- (c) Registrar of the Institute;
- (d) one Professor of the Institute on rotation basis, as may be nominated by the Chairperson;

(e) one Member from the Executive Council to be nominated by the Chairperson;
 (f) Joint Secretary in the Ministry of Youth Affairs and Sports dealing with the affairs of the Institute;

(g) the Finance Officer of the Institute—Member-Secretary.

(3) The term of office of members of the Finance Committee and its powers shall be such as may be provided by the Statutes. 5

(4) While nominating the members of the Academic Council due representation shall be given to women, different regions of the country, weaker sections of the community and differently-abled persons.

Functions of
Finance
Committee.

19. The Finance Committee shall perform the following functions, namely:— 10

(a) to scrutinise the accounts and budget estimates of the Institute and to make recommendations to the Executive Council;

(b) to scrutinise the proposals for new expenditure on account of major works on purchases;

(c) to scrutinise re-appropriation statements and audit notes and make recommendations thereon to the Executive Council; 15

(d) to review the finances of the Institute from time to time and have concurrent audit conducted whenever necessary; and

(e) to give advice and make recommendations to the Executive Council on any financial questions affecting the affairs of the Institute. 20

Other
authorities.

20. The constitution, powers and functions of the other authorities, as may be declared by the Statutes to be authorities of the Institute, shall be such as may be provided by the Statutes.

CHAPTER IV

OFFICERS OF THE INSTITUTE

Officers of
Institute.

21. The Institute shall consist of the following officers, namely:— 25

(a) the Director;

(b) the Registrar; and

(c) such other officers as may be declared by the Statutes to be the officers of the Institute. 30

Director.

22. (1) The Director of the Institute shall be appointed by the Visitor for a period of three years in the manner specified in sub-sections (2) and (3) on such terms and conditions of service as may be provided by the Statutes:

Provided that the first Director shall be appointed by the Central Government on such terms and conditions as it deems fit, for a period not exceeding six months from the appointed day. 35

(2) The Director shall be appointed by the Visitor from a panel of three persons with outstanding academic qualifications as recommended by a Search Committee constituted by the Central Government for that purpose.

(3) The Search Committee referred to in sub-section (2) shall consist of three members, one each to be nominated by the Executive Council, the Central Government and the Visitor. 40

(4) The Director shall be the principal academic and executive officer of the Institute and shall be responsible for the proper administration and academic performance of the Institute and for imparting of instruction and maintenance of discipline therein.

(5) The Director shall submit annual report and audited accounts of the Institute to the Executive Council and the Central Government and the Central Government shall thereupon cause the same to be laid before each House of Parliament. 45

(6) The Director shall exercise such other powers and perform such other duties as may be assigned to him by the Act, the Statutes and the Ordinances.

Registrar.

23. (1) The Registrar of the Institute shall be appointed in such manner and on such terms and conditions as may be provided by the Statutes and shall be the custodian of records, common seal, the funds of the Institute and such other property of the Institute as the Executive Council shall commit to his charge. 50

(2) The Registrar shall act as the Member-Secretary of the Executive Council, the Academic Council and such committees as may be provided by the Statutes. 55

(3) The Registrar shall be responsible to the Director for the proper discharge of his functions.

(4) The Registrar shall exercise such other powers and perform such other duties as may be assigned to him by this Act, the Statutes or by the Director.

5 24. The manner of appointment, emoluments, powers and duties of the other officers of the Institute shall be such as may be provided by the Statutes.

Other officers.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

10 25. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Institute in each financial year such sums of money and in such manner as it may think fit for being utilised for the purposes of this Act.

Grants by Central Government.

26. (1) The Institute shall maintain a Fund to which shall be credited—

Fund of Institute.

(a) all monies provided by the Central Government;

(b) all fees and other charges levied and collected by the Institute;

15 (c) all monies received by the Institute by way of grants, gifts, donations, benefactions, bequests or transfers; and

(d) all monies received by the Institute in any other manner or from any other source.

20 (2) All monies credited to the Fund shall be deposited in such banks or invested in such manner as may be decided by the Executive Council.

(3) The Fund shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its duties under this Act.

27. Without prejudice to the provisions contained in section 26, the Institute may,—

25 (a) set up an endowment fund with an amount of one hundred crore rupees to be maintained in the Public Account and any other fund for a specified purpose; and

Endowment or other funds.

(b) transfer monies from its fund to the endowment fund or any other fund.

28. (1) The Institute shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit.

(2) The accounts of the Institute shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Institute to the Comptroller and Auditor-General of India.

35 (3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Institute shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected 40 vouchers and other documents and papers and to inspect the offices of the Institute.

(4) The accounts of the Institute as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

45 29. (1) The Institute shall constitute for the benefits of its employees, including the Director, such pension, insurance and provident fund scheme as it may deem fit, in such manner and subject to such conditions as may be provided by the Statutes.

Pension and provident fund.

19 of 1925. (2) Where any such provident fund has been so constituted, the Central Government may declare that the provisions of the Provident Funds Act, 1925 shall apply to such fund 50 as if it were a Government Provident Fund.

30. All appointments of the staff of the Institute, except that of the Director, shall be made with the prior approval of the Central Government and in accordance with the procedure laid down in the Statutes,—

Appointment of staff of Institute.

(a) by the Executive Council, if the appointment is made on the academic staff in the post of Assistant Professor or above or if the appointment is made on the non-academic staff in any cadre, the maximum of the pay-scale for which is the same or higher than that of an Assistant Professor; and

(b) by the Director; in any other case;

Power to
make
Statutes.

31. Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:—

(a) the formation of departments of teaching and other academic units;

(b) the institution of fellowships, scholarships, exhibitions, medals and prizes;

(c) the classification of posts, terms of office, method of appointment, powers and duties and other terms and conditions of service of the officers of the Institute including the Chairperson, the Director, the Registrar and such other officers as may be declared as officers of the Institute by the Statutes;

(d) the constitution, powers and duties of the authorities of the Institute referred in clause (c) of section 11;

(e) the delegation of powers vested in the authorities or officers of the Institute;

(f) the code of conduct, disciplinary actions thereto for misconduct including removal from service of employees on account of misconduct and the procedure for appeal against the actions of an officer or authority of the Institute;

(g) the conferment of honorary degrees;

(h) the establishment and maintenance of halls, residences and hostels;

(i) the authentication of the orders and decisions of the Executive Council;

(j) any other matter which by this Act is to be, or may be, provided by the Statutes.

Statutes how
to be made.

32. (1) The first Statutes of the Institute shall be framed by the Central Government with the approval of the Visitor, and a copy of the same shall be laid as soon as may be, after it is made, before each House of Parliament.

(2) Without prejudice to the provisions contained in sub-section (1), the Executive Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner hereafter in this section provided.

(3) A new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may assent thereto or withhold such assent or remit it to the Executive Council for consideration.

(4) A new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented to by the Visitor.

Power to
make
Ordinances.

33. Subject to the provisions of this Act and the Statutes, the Ordinances of the Institute may provide for all or any of the following matters, namely:—

(a) the admission of the students to the Institute;

(b) the reservation in admission to various courses or programmes of the Institute for the Scheduled Castes, the Scheduled Tribes and other categories of persons;

(c) the courses of study to be laid down for all degrees, diplomas and certificates awarded by the Institute;

(d) the conditions under which students shall be admitted to the degree, diploma and certificate courses and to the examinations of the Institute and the eligibility conditions for awarding the same;

(e) the conditions of award of fellowships, scholarships, exhibitions, medals and prizes;

(f) the conditions and manner of appointment and duties of examining bodies, examiners and moderators;

(g) the conduct of examinations;

(h) the maintenance of discipline among the students of the Institute;

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(i) the fees to be charged for courses of study in the Institute and for admission to the examinations of degrees of the Institute;

(j) the conditions of residence of students of the Institute and the levying of the fees for residence in the halls and hostels and of other charges; and

5 (k) any other matter which by this Act or the Statute is to be, or may be, provided by the Ordinances.

34. (7) Save as otherwise provided in this section, Ordinances shall be made by the Academic Council.

Ordinances
how to be
made.

10 (2) All Ordinances made by the Academic Council shall have effect from such date as it may direct, but every Ordinance so made shall be submitted, as soon as may be, to the Executive Council and shall be considered by the Executive Council at its next succeeding meeting.

15 (3) The Executive Council shall have power by resolution to modify or cancel any such Ordinance and such Ordinance shall from the date of such resolution stand modified accordingly or cancelled, as the case may be.

35. The authorities of the Institute may have their own rules of procedure, consistent with the provisions of this Act, the Statutes and the Ordinances for the conduct of their own business and that of the committees, if any, appointed by them and not provided for by this Act, the Statutes or the Ordinances.

Conduct of
business by
authorities of
Institute.

20 36. (1) Any dispute arising out of a contract between the Institute and any of its employees shall, at the request of the employee concerned or at the instance of the Institute, be referred to a Tribunal of Arbitration consisting of one member appointed by the Institute, one member nominated by the employee, and an umpire appointed by the Visitor.

Tribunal of
Arbitration.

25 (2) The decision of the Tribunal shall be final and shall not be questioned in any court.

(3) No suit or proceeding shall lie in any court in respect of any matter, which is required by sub-section (1) to be referred to the Tribunal of Arbitration.

(4) The Tribunal of Arbitration shall have power to regulate its own procedure.

30 (5) Nothing contained in any law for the time being in force relating to arbitration shall apply to arbitrations under this section.

CHAPTER VI

MISCELLANEOUS

37. No act of the Institute or Executive Council or Academic Council or any other body set up under this Act or the Statutes, shall be invalid merely by reason of—

Acts and
proceedings
not to be
invalidated by
vacancies.

35 (a) any vacancy in, or defect in the constitution thereof; or

(b) any defect in the election, nomination or appointment, of a person acting as member thereof; or

(c) any irregularity in its procedure not affecting the merits of the case.

3 of 1956. 40 38. Notwithstanding anything contained in the University Grants Commission Act, 1956 or any other law for the time being in force, the Institute shall have power to grant degrees and other academic distinctions and titles under this Act:

Grant of
degrees, etc.,
by Institute.

Provided that the nomenclature of any degree to be granted by the Institute shall be notified by the University Grants Commission with the prior approval of the Central Government.

Sponsored schemes.

39. Notwithstanding anything contained in this Act, whenever the Institute receives funds from any Government, the University Grants Commission or any other agency including industry sponsoring a research scheme, a consultancy assignment, a teaching programme or a chaired professorship or a scholarship, to be executed or endowed at the Institute,—

(a) the amount received shall be kept by the Institute separately from the fund of the Institute and utilised only for the purpose of the scheme:

Provided that any money remaining unutilised under this clause shall be transferred to the endowment fund set up under section 27; and

(b) the staff required to execute the same shall be recruited in accordance with the terms and conditions stipulated by the sponsoring organisation with prior approval of the Central Government:

Provided that the principles laid down in the General Financial Rules, 2005 shall be followed for approval of sponsored schemes funded by the Central Government.

Meetings of Academic Council and Finance Committee.

40. The Academic Council and the Finance Committee shall meet at such times and follow such procedure, in its meetings (including quorum at such meetings) as may be provided by the Statutes.

Power of Central Government to give directions to Institute.

41. (1) The Central Government may give such directions, as it may deem necessary, to the Institute for the effective administration of this Act and the Institute shall comply with such directions.

(2) In case of dispute between the Institute and the Central Government, in connection with the exercise of its powers and discharge of its functions by the Institute under this Act, the decision of the Central Government on that dispute, shall be final.

Protection of action taken in good faith.

42. No suit or other legal proceedings shall lie against any officer or employee of the Institute for anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Act, the Statutes or the Ordinances.

Power to make rules.

43. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which the books of account of the Institute shall be maintained under sub-section (1) of section 28;

(b) any other matter which is required to be, or may be, prescribed.

Statutes, Ordinances and notifications to be published in Official Gazette and to be laid before Parliament.

44. (1) Every rule made by the Central Government and every Statute and every Ordinance made or notification issued under this Act shall be published in the Official Gazette.

(2) Every rule made by the Central Government, every Statute and every Ordinance made or notification issued under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Statute, Ordinance or notification or both Houses agree that the Statute, Ordinance or notification should not be made or issued, the Statute, Ordinance or notification shall thereafter have effect only in such modified form

or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Statute, Ordinance or notification.

- (3) The power to make the Statutes, Ordinances or notifications shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the Statutes, Ordinances, notifications or any of them but no retrospective effect shall be given to any Statute, Ordinance or notification so as to prejudicially affect the interests of any person to whom such Statute, Ordinance or notification may be applicable.

45. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions or give such directions not inconsistent with the provisions of this Act, as appears it to be necessary or expedient for removing the difficulty:

Power to
remove
difficulties.

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

46. Notwithstanding anything contained in this Act,—

Transitional
provisions.

- (a) the Advisory Board and the Executive Council of the existing Institute functioning as such immediately before the commencement of this Act shall continue to so function until an Executive Council is constituted for the Institute under this Act, but on the constitution of a new Executive Council under this Act, the members of the Advisory Board and Executive Council holding office before such constitution shall cease to hold office; and

- (b) until the first Statutes and the Ordinances are made under this Act, the Statutes and the Ordinances of the existing Institute, or notification as in force, immediately before the commencement of this Act, shall continue to apply to the Institute in so far as they are not inconsistent with the provisions of this Act.

Sd/-

V.K. Bhasin,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. Gothi,

Secretary to Government



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The Gujarat Government Gazette

EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 26th July, 2013.

No. RPB/23-2013/Act.-36--12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 11th September, 2012, Bhadra 20, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 11th September, 2012, is hereby published for general information:-

THE CHEMICAL WEAPONS CONVENTION (AMENDMENT)

ACT, 2012

AN

(Act No. 36 of 2012)

ACT

[11th September, 2012]

to amend the chemical Weapons Convention Act, 2000.

Be it enacted by Parliament in the sixty-third Year of the Republic of India as follows:-

1. (1) This Act may be called the Chemical Weapons Convention (Amendment) Act, 2012.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title
and com-
mencement.

Amendment
of section 9.

2. In the Chemical Weapons Convention Act, 2000 (hereinafter referred to as the principal Act), in section 9, in sub-section (1),—

(a) after the words "National Authority", the words "or of the Central Government" shall be inserted;

(b) the following proviso shall be inserted, namely:—

"Provided that such officers shall fulfil the prescribed criteria."

Substitution of
new section
for section
16.

3. For section 16 of the principal Act, the following section shall be substituted, namely:—

Restriction on
transfer of
Toxic
Chemical or
Precursor
listed in
Schedule 2.

"16. No person shall transfer to, or receive from, a State which is not a party to the Convention or any person who is not a citizen of a State Party, any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the Convention."

Amendment
of section 18.

4. In section 18 of the principal Act,—

(a) in sub-section (1), in the opening portion, for the words "Every person who is", the words "Subject to such exemptions and thresholds as may be prescribed, every person who is" shall be substituted;

(b) in sub-section (2), in the opening portion, for the words "No person, who after the commencement of this Act", the words "Subject to such exemptions and thresholds as may be prescribed, no person, who after the coming into force of this section" shall be substituted;

(c) in sub-section (4), after the words "a certificate of registration", the words "subject to such terms and conditions as may be prescribed" shall be inserted;

(d) after sub-section (5), the following sub-section shall be inserted, namely:—

"(6) Every person, to whom a certificate of registration is granted under sub-section (4), shall furnish to the Central Government periodically, or, as and when required, such information, declaration or return as may be prescribed."

Amendment
of section
42.

5. In section 42 of the principal Act, for the words "any person", the words "a State which is not a State Party or any person" shall be substituted.

Amendment
of section 56.

6. In section 56 of the principal Act, in sub-section (2),—

(a) after clause (b), the following clause shall be inserted, namely:—

"(ba) the criteria which the officers are required to fulfil under sub-section (1) of section 9";

(b) for clause (c), the following clause shall be substituted, namely:—

"(c) the exemptions and thresholds under sub-sections (1) and (2) of section 18, the form of application, the particulars to be contained in the application form, the form of certificate of registration, the manner of making application, the amount of fee payable, the procedure to be followed in granting or cancelling certificate of registration under sub-section (3) of section 18, the terms and conditions for granting a certificate of registration under sub-section (4) of section 18, the period for which a renewed certificate of registration may be issued and the amount of fee payable therefor under sub-section (5) of section 18 and information, declaration or return to be furnished under sub-section (6) of that section;"

Sd/-

D. BRAHM AVTAR AGRAWAL,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTH,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 29th July, 2013.

No. RPB/24-2013/Act.-37-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 13th September, 2012/Bhadra 22, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 12th September, 2012, is hereby published for general information:-

THE ALL-INDIA INSTITUTE OF MEDICAL SCIENCES (AMENDMENT) ACT, 2012

AN

(Act No. 37 of 2012)

ACT

[12th September, 2012]

further to amend the All-India Institute of Medical Sciences Act, 1956.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the All-India Institute of Medical Sciences (Amendment) Act, 2012. Short title and commencement.

(2) It shall be deemed to have come into force on the 16th day of July, 2012.

25 of 1956. 2. In the All-India Institute of Medical Sciences Act, 1956 (hereinafter referred to as the principal Act), in the long title, for the words "an All-India Institute of Medical Sciences", the words "All-India Institutes of Medical Sciences" shall be substituted. Amendment of long title.

3. In section 1 of the principal Act, in sub-section (1), for the words "All-India Institute of Medical Sciences", the words "All-India Institutes of Medical Sciences" shall be substituted. Amendment of section 1.

4. In section 2 of the principal Act,—

(A) for clause (a), the following clauses shall be substituted, namely:—

"(a)"corresponding Institute" means the Institutes referred to in column (3) of the Table given under section 27 A;

Amendment of section 2.

(aa) "existing Institute" means the All-India Institute of Medical Sciences,—

(i) established under sub-section (1) of section 3, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012; and

(ii) located at New Delhi, as required under section 12 as it stood before such commencement;

(ab) "Fund" means the Fund of the Institute referred to in section 16;

(B) in clause (c), after the words and figure "under section 3", the words, brackets and figures "and includes the corresponding Institutes and other Institutes which may be established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012" shall be inserted;

(C) after clause (f), the following clause shall be inserted at the end, namely:—

'(g) "society" means the society referred to in column (2) of the Table given under section 27A.'

Amendment
of section 3.

5. In section 3 of the principal Act,—

(a) in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that the Central Government may, on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, establish by notification in the Official Gazette, such other All-India Institutes of Medical Sciences at such places as it may specify in the said notification in addition to the existing Institute and the corresponding Institutes."

(b) in sub-section (2), for the words "The Institute", the words "Every Institute" shall be substituted.

Amendment
of section 4.

6. In section 4 of the principal Act,—

(i) in the opening portion, for the words "The Institute", the words "Every Institute" shall be substituted;

(ii) for clause (a), the following clauses shall be substituted, namely:—

"(a) in the case of existing Institute, the Vice-Chancellor of the Delhi University, *ex officio*;

(aa) in the case of every other Institute established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, the Vice-Chancellor of a University situated in a State in which such Institute has been established after such commencement and such Vice-Chancellor shall be nominated by the Central Government;"

Substitution
of new
section for
section 5.

7. For section 5 of the principal Act, the following section shall be substituted, namely:—

Declaration
of Institutes
as institution
of national
importance.

"5. (1) It is hereby declared that the existing Institute declared as an institution of national importance, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, under section 5 as it stood before such commencement, shall continue to be an institution of national importance.

(2) It is hereby declared that every corresponding Institute shall be an institution of national importance.

(3) It is hereby declared that every Institute established under the proviso to sub-section (1) of section 3, on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, shall be an institution of national importance."

8. In section 7 of the principal Act, in sub-section (1),—

Amendment
of section 7.

(a) for the words "President of the Institute", the words "President for every Institute" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that the President of the existing Institute shall also be the President of every corresponding Institute and other Institutes established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, till such date the Central Government nominates a separate President for every corresponding Institute and other Institutes established after such commencement."

9. In section 8 of the principal Act,—

Amendment
of section 8.

(a) for the words "from the Institute", the words "from the Institute of which they are the President and members" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that in case a person is a President of two or more Institutes, the allowances shall be borne by the Institutes in such proportion as may be prescribed by rules."

10. In section 9 of the principal Act,—

Amendment
of section 9.

(a) for the words "The Institute shall", the words "Every Institute shall" shall be substituted;

(b) for the words "the Institute shall meet", the words "every Institute shall meet" shall be substituted;

(c) the following proviso shall be inserted, namely:—

"Provided that the provisions relating to holding of the first meeting shall not apply to the existing Institute."

11. In section 10 of the principal Act,—

Amendment
of section 10.

(a) in sub-section (1),—

(i) for the words "a Governing Body of the Institute which shall be constituted by the Institute", the words "separate Governing Body for every Institute which shall be constituted by such Institute" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that the Governing Body of the existing Institute, constituted before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, shall be deemed to have been constituted under this section."

(b) in sub-sections (2) and (3), for the words "the Institute", the words "every Institute" shall be substituted;

(c) in sub-section (5),—

(i) for the words "the Institute may constitute", the words "every Institute may constitute" shall be substituted;

(ii) for the words "functions of the Institute", the words "functions of such Institute" shall be substituted;

(d) in sub-section (6),—

(i) for the words "members of the Institute; but an *ad hoc* committee may include persons who are not members of the Institute", the words "members of

every Institute; but an *ad hoc* committee may include persons who are not members of such Institute" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that the Standing Committee of the existing Institute constituted, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, shall be deemed to have been constituted under this section."

Amendment
of section 11.

12. In section 11 of the principal Act, in sub-section (1),—

(a) for the words "chief executive officer of the Institute", the words "chief executive officer of every Institute" shall be substituted;

(b) for the words "Director of the Institute", the words "Director of such Institute" shall be substituted;

(c) for the proviso, the following provisos shall be substituted, namely:—

"Provided that the first Director of every Institute (other than the existing Institute), established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, shall be appointed by the Central Government:

Provided further that in case a Director of a society has been appointed by the Central Government before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, such Director shall be deemed to be the first Director of the concerned corresponding Institute."

Substitution
of new
section for
section 12.

13. For section 12 of the principal Act, the following section shall be substituted, namely:—

Location of
Institutes.

"12. (1) The existing Institute shall be located at New Delhi.

(2) All corresponding Institutes shall be located at the places mentioned in column (3) of the Table given under section 27A.

(3) All Institutes [other than the existing Institute and corresponding Institutes referred to in sub-sections (1) and (2)] shall be located at such places as the Central Government may, by notification in the Official Gazette, specify."

Amendment
of section 13.

14. In section 13 of the principal Act, in the opening portion, for the words "the Institute", the words "every Institute" shall be substituted.

Amendment
of section 14.

15. In section 14 of the principal Act, in the opening portion, for the words "the Institute", the words "every Institute" shall be substituted.

Amendment
of section 15.

16. In section 15 of the principal Act, for the words "the Institute", the words "every Institute" shall be substituted.

Amendment
of section 16.

17. In section 16 of the principal Act, in sub-section (1),—

(i) for the words "The Institute", the words "Every Institute" shall be substituted;

(ii) after clause (d), the following proviso shall be inserted, namely:—

"Provided that the Fund maintained by the existing Institute and the society, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, shall be deemed to be the Fund maintained under this section."

18. In section 17 of the principal Act,—

Amendment
of section 17.

(a) for the words "The Institute shall prepare", the words "Every Institute shall prepare" shall be substituted;

(b) for the words "expenditure of the Institute", the words "expenditure of the concerned Institute" shall be substituted.

19. In sections 18 and 19 of the principal Act, for the words "The Institute" and "the Institute", wherever they occur, the words "Every Institute" and "every Institute" shall, respectively, be substituted.

Amendment
of sections
18 and 19.

20. In section 20 of the principal Act, in sub-section (1),—

Amendment
of section 20.

(a) for the words "The Institute", the words "Every Institute" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that the pension and provident fund constituted by the existing Institute or society, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, shall be deemed to be the pension and provident fund under this section."

21. In section 21 of the principal Act,—

Amendment
of section 21.

(a) for the words "decisions of the Institute", the words "decisions of every Institute" shall be substituted;

(b) for the words "officer of the Institute", the words "officer of every Institute" shall be substituted.

22. In sections 22, 23, 24, 25 and 27 of the principal Act, for the words "The Institute" and "the Institute", wherever they occur, the words "Every Institute" and "every Institute" shall, respectively, be substituted.

Amendment
of sections
22, 23, 24,
25 and 27.

23. After section 27 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
27A, 27B,
27C and 27D.

"27A. Each of the Institute, registered as society under the Societies Registration Act, 1860 and mentioned in column (2) of the Table below shall be a body corporate having perpetual succession and common seal and shall by its name mentioned in column (3) of that Table, sue and be sued:

Incorporation
of Institute
registered as
society under
the Societies
Registration
Act, 1860.

21 of 1860.

TABLE

LIST OF SOCIETIES INCORPORATED AS ALL-INDIA INSTITUTES OF MEDICAL SCIENCES

Serial Number	Society	Corresponding Institute and place of its location
(1)	(2)	(3)
1.	All-India Institute of Medical Sciences, Bhopal	All-India Institute of Medical Sciences, Bhopal (Madhya Pradesh).
2.	All-India Institute of Medical Sciences, Bhubaneswar	All-India Institute of Medical Sciences, Bhubaneswar (Odisha).
3.	All-India Institute of Medical Sciences, Jodhpur	All-India Institute of Medical Sciences, Jodhpur (Rajasthan).
4.	All-India Institute of Medical Sciences, Patna	All-India Institute of Medical Sciences, Patna (Bihar).

(1)	(2)	(3)
5.	All-India Institute of Medical Sciences, Raipur	All-India Institute of Medical Sciences, Raipur (Chhattisgarh).
6.	All-India Institute of Medical Sciences, Rishikesh	All-India Institute of Medical Sciences, Rishikesh (Uttarakhand).

Effect of
incorporation
of Institutes.

27B. (1) On and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012,—

(a) any reference to a society in any law, other than this Act, or in any contract or other instrument, shall be deemed as a reference to the corresponding Institute;

(b) all property, movable and immovable, of or belonging to a society shall vest in the corresponding Institute;

(c) all the rights and liabilities of a society shall be transferred to, and be the rights and liabilities of, the corresponding Institute;

(d) subject to the provisions of this Act, every person (including Director, officers and other employees) who is employed in the society, immediately before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, shall, on and after such commencement, become an employee of the corresponding Institute and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, as if the said Act had not been promulgated, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by regulations:

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government;

(e) the governing body of every society, shall, from the date of constitution of the Governing Body under sub-section (1) of section 10, stand dissolved and no chairperson or other person shall be entitled to any compensation for the premature termination of the term of his office or of any contract of service;

(f) all committees (including Standing Committee, if any) of the society shall stand dissolved;

(g) any examination conducted by the existing Institute for admission of candidates for award of medical degrees and diplomas by such society shall be valid examination and be deemed to have been conducted by the corresponding Institute.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, absorption of any employee by the corresponding Institutes in its regular service under this section shall not entitle such employee to any compensation under this Act or any other law and no such claim shall be entertained by any court, tribunal or other authority.

14 of 1947.

Provisions of
this Act to apply
to societies
incorporated
into All-India
Institutes of
Medical Sciences
under section
27A.

27C. All provisions of this Act shall, *mutatis mutandis*, apply to the societies, referred to in column (2) of the Table given under section 27A, incorporated into All-India Institutes of Medical Sciences referred to in column (3) of the said Table.

27D. (1) The Central Government may, if it is of the opinion that certain measures are required for speedy and effective functioning of corresponding Institutes (other than the existing Institute), by notification in the Official Gazette, specify such measures as it may consider necessary for the smooth and effective functioning of such Institutes:

Power to make transitory provisions for Institutes (other than existing Institute).

Provided that no such notification shall be issued under this section, after the expiry of a period of two years from the date of commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012.

(2) Every notification issued under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

24. In section 28 of the principal Act,—

Amendment of section 28.

(a) in sub-section (1), for the words "the Institute", the words "all the Institutes" shall be substituted;

(b) in sub-section (2),—

(i) for the words "the Institute", wherever they occur, the words "every Institute" shall be substituted;

(ii) after clause (a), the following clause shall be inserted, namely:—

"(aa) the proportion of allowances of the President to be borne by the Institutes under the proviso to section 8;"

25. In section 29 of the principal Act,—

Amendment of section 29.

(a) in sub-section (1),—

(i) in the opening portion, for the words "The Institute", the words "Every Institute" shall be substituted;

(ii) after clause (n), the following proviso shall be inserted, namely:—

"Provided that the regulations made by the existing Institute, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, shall continue to be the regulations made under this section until such regulations are amended or rescinded by the existing Institute in accordance with the provisions of this section.";

(b) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that every corresponding Institute shall, within three months of the date of the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, make regulations."

Ord. 1 of 2012.

26. (1) The All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

Sd/-

Dr. BRAHM AVATAR AGRAWAL,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTH,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. LIV]

MONDAY, JULY 29, 2013/SRAVANA 7, 1935

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 29th July, 2013.

No. RPB/26-2013/Act.-39-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 24th December, 2012/Pausa 3, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 21st December, 2012, is hereby published for general information:-

THE NORTH-EASTERN AREAS (REORGANISATION) AMENDMENT (AMENDMENT) ACT, 2012

(Act No. 39 of 2012)

AN

[21st September, 2012]

ACT

further to amend the North-Eastern Areas (Reorganisation) Act, 1971.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the North-Eastern Areas (Reorganisation) (Amendment) Act, 2012. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 61 of the North-Eastern Areas (Reorganisation) Act, 1971, for sub-section (3), the following sub-sections shall be substituted, namely:— Amendment of long title.

"(3) On and from the date of commencement of the North-Eastern Areas (Reorganisation) Amendment Act, 2012, there shall be constituted each for the State of Manipur and for the State of Tripura a separate cadre of the Indian Administrative Service, a separate cadre of the Indian Police Service and a separate cadre of the Indian Forest Service.

(3A) The initial strength and composition of the State cadres referred to in sub-section (1) shall be such as the Central Government may, by order, determine before the date of commencement of the North-Eastern Areas (Reorganisation) Amendment Act, 2012.

(3B) The members of each of the said services borne on the joint cadre for the States of Manipur and Tripura in each category of the All-India Services immediately before the commencement of the North-Eastern Areas (Reorganisation) Amendment Act, 2012 shall be allocated to the State cadres of the same service constituted under sub-section (1) in such manner and with effect from such date or dates as the Central Government may, by order, specify.

(3C) Nothing in this section shall be deemed to affect the operation, on or after the commencement of the North-Eastern Areas (Reorganisation) Amendment Act, 2012, of the All-India Services Act, 1951, or the rules and regulations made thereunder." 61 of 1951.

Sd/-

P. K. Malhotra,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. Gothi,

Secretary to Government



सत्यमेव जयते

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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 1st August, 2013.

No. RPB/26-2013/Act.-26-12/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 5th June, 2012 / Jaistha 15, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 4th June, 2012 is hereby published for general information:-

THE NORTH-EASTERN AREAS (REORGANISATION) AND OTHER RELATED LAWS (AMENDMENT) ACT, 2012

AN

(Act No. 26 of 2012)

ACT

[4th June, 2012]

*further to amend the North-Eastern Areas (Reorganisation) Act, 1971 and Other
Related Laws.*

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II

AMENDMENTS TO THE NORTH-EASTERN AREAS (REORGANISATION)
ACT, 1971Amendment
of section 2.

2. In section 2 of the North-Eastern Areas (Reorganisation) Act, 1971 (hereinafter referred to as the principal Act), in clause (d), the following proviso shall be inserted, namely:—

'Provided that on and from the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, the provisions of this clause shall have effect as if for the brackets and words "(Assam, Nagaland, Meghalaya, Manipur and Tripura)", the brackets and words "(Assam, Arunachal Pradesh, Mizoram and Nagaland)" had been substituted.'

Amendment
of section
28.

3. In section 28 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that on and from the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, the common High Court shall be the High Court for the States of Assam, Arunachal Pradesh, Mizoram and Nagaland and shall cease to have its jurisdiction, powers and authority for the States of Meghalaya, Manipur and Tripura."

Insertion of
new sections
28A to 28K.Establishment
of separate
High Courts
for the States
of
Meghalaya,
Manipur and
Tripura.

4. After section 28 of the principal Act, the following sections shall be inserted, namely:—

"28A. (1) On and from the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, there shall be a High Court—

- (a) for the State of Meghalaya to be called the High Court of Meghalaya;
- (b) for the State of Manipur to be called the High Court of Manipur;
- (c) for the State of Tripura to be called the High Court of Tripura.

(2) The principal seat of the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura shall respectively be at such place as the President may, by notified order, appoint.

(3) Notwithstanding anything contained in sub-section (2), the Judges and division courts of the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura may sit at such other place or places in the States of Meghalaya, Manipur and Tripura respectively, other than their principal seat as the Chief Justice of the respective High Court may, with the approval of the Governor of the State concerned, appoint.

Judges of
High Courts
of
Meghalaya,
Manipur and
Tripura.

28B. (1) Such of the Judges of the common High Court holding office immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 as may be determined by the President after ascertaining their option shall, on such commencement, cease to be the Judges of the common High Court and become a Judge of the High Court of Meghalaya or the High Court of Manipur or the High Court of Tripura, as the case may be.

(2) Every person who by virtue of sub-section (1) become a Judge of the High Court of Meghalaya or the High Court of Manipur or the High Court of Tripura shall, except in the case where any such person is appointed to be the Chief Justice of any of those High Courts, rank in the respective High Court according to the priority of their respective appointments as Judges of the common High Court.

28C. The High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura shall have, in respect of any part of the territories included in the State of Meghalaya, the State of Manipur and the State of Tripura respectively, all such jurisdiction, powers and authority as, under the law in force immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, are exercisable in respect of that part of the said territories by the common High Court.

Jurisdiction of High Courts of Meghalaya, Manipur and Tripura.

28D. The law in force immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 with respect to the custody of the seal of the common High Court shall, with the necessary modifications, apply with respect to the custody of the seal of the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura, as the case may be.

Custody of seal of High Courts of Meghalaya, Manipur and Tripura.

28E. The law in force immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 with respect to practice and procedure in the common High Court shall, with necessary modifications, apply in relation to the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura, and accordingly, the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura shall, respectively, have all such powers to make rules and orders with respect to practice and procedure as are immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 exercisable by the common High Court:

Practice and procedure in the High Courts of Meghalaya, Manipur and Tripura.

Provided that any rules or orders which are in force immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 with respect to the practice and procedure in the common High Court shall, until varied or revoked by rules or orders made by the High Court of Meghalaya or the High Court of Manipur or the High Court of Tripura, as the case may be, apply with the necessary modifications in relation to the practice and procedure in the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura respectively, as if such rules or orders were made by the respective High Court.

28F. The law in force immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 with respect to the form of writs and other processes used, issued or awarded by the common High Court shall, with the necessary modifications, apply with respect to the form of writs and other processes used, issued or awarded by the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura.

Forms of writs and other processes.

28G. The law in force immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 relating to the powers of the Chief Justice, Single Judges and division courts of the common High Court and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura.

Powers of Judges.

28H. The law in force immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 relating to appeals to the Supreme Court from the common High Court and the Judges and division courts thereof shall, with the necessary modifications, apply in relation to the High Courts of Meghalaya, Manipur and Tripura.

Procedure as to appeals to Supreme Court.

Transfer of proceedings from common High Court to the High Courts of Meghalaya, Manipur and Tripura.

28-I. (1) Except as hereinafter provided, the common High Court shall, as from the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, have no jurisdiction in respect of the States of Meghalaya, Manipur and Tripura.

(2) Such proceedings pending in the common High Court immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 as are certified, whether before or after that day, by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances to be proceedings which ought to be heard and decided by the High Court of Meghalaya or the High Court of Manipur or the High Court of Tripura, as the case may be, shall, as soon as may be after such certification, be transferred to the High Court of Meghalaya or the High Court of Manipur or the High Court of Tripura, as the case may be.

(3) Notwithstanding anything contained in sub-sections (1) and (2) or in section 28A, but save as hereinafter provided, the common High Court shall have, and the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the common High Court before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012:

Provided that if after any such proceedings have been entertained by the common High Court, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Meghalaya or the High Court of Manipur or the High Court of Tripura, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the common High Court—

(a) before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, in any proceedings transferred to the High Court of Meghalaya, or the High Court of Manipur or the High Court of Tripura by virtue of sub-section (2); or

(b) in any proceeding with respect to which the common High Court retains jurisdiction by virtue of sub-section (3),

shall, for all purposes, have effect, not only as an order of the common High Court but also as an order made by the High Court of Meghalaya, or the High Court of Manipur or the High Court of Tripura, as the case may be.

Interpretation.

28J. For the purposes of section 28H,—

(a) proceedings shall be deemed to be pending in a Court until that Court has disposed of all issues between the parties, including any issue with respect to the taxation of the costs of the proceedings and shall include appeals, applications for leave to appeal to the Supreme Court, applications for review, petitions for revision and petitions for writs; and

(b) references to a High Court shall be construed as including references to a Judge or division Court thereof, and references to an order made by a Court or a Judge shall be construed as including references to a sentence, judgment or decree passed or made by that Court or Judge.

Saving.

28K. Nothing in sections 28A to 28J (both inclusive) shall affect the application to the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura of any provisions of the Constitution, and the provisions of these sections shall have effect subject to any provision that may be made on or after the

commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 with respect to the respective High Court by any Legislature or other authority having power to make such provisions."

5. In section 31 of the principal Act, in sub-section (3), for the words "Assam, Manipur, Meghalaya, Nagaland or Tripura", the words "Assam, Arunachal Pradesh, Mizoram or Nagaland" shall be substituted.

Amendment
of section
31.

6. In section 32 of the principal Act, the following proviso shall be inserted, namely:—

Amendment
of section
32.

"Provided that on and from the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, the provisions of this section shall cease to have effect."

7. In section 33 of the principal Act, for the words "Manipur, Meghalaya, Nagaland and Tripura", the words "Arunachal Pradesh, Mizoram and Nagaland" shall be substituted.

Amendment
of section
33.

8. After section 87 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
87A.

"87A. (1) If any difficulty arises in giving effect to the provisions of this Act, as amended by the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012.

(2) Every order made under this section shall be laid before each House of Parliament."

CHAPTER III

AMENDMENTS TO THE ADVOCATES ACT, 1961 AND SPECIAL PROVISIONS RELATING TO THE BAR COUNCIL AND ADVOCATES

25 of 1961. 9. On and from the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, in section 3 of the Advocates Act, 1961,—

Amendment
of section 3.

(A) in sub-section (1),—

(i) in clause (a), for the words "and Uttaranchal", the words "Uttarakhand, Meghalaya, Manipur and Tripura" shall be substituted;

(ii) for clause (b), the following clause shall be substituted, namely:—

"(b) for the States of Arunachal Pradesh, Assam, Mizoram and Nagaland to be known as the Bar Council of Arunachal Pradesh, Assam, Mizoram and Nagaland;"

(B) in sub-section (2), for the words "in the case of the State Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, the Advocate-General of each of the States of Assam, Manipur, Meghalaya, Nagaland and Tripura", the words "in the case of the State Bar Council of Assam, Arunachal Pradesh, Mizoram and Nagaland, the Advocate-General of each of the States of Assam, Arunachal Pradesh, Mizoram and Nagaland" shall be substituted.

Special provision relating to Bar Councils and advocates.

10. (1) Any person who immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 is an advocate on the roll of the Bar Council of the States of Assam, Nagaland, Meghalaya, Manipur and Tripura may give his option in writing, within one year from the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 to the Bar Council of such State, to transfer his name on the roll of the Bar Council of any one State among the States of Meghalaya, Manipur and Tripura and notwithstanding anything contained in the Advocates Act, 1961 and the rules made thereunder, upon such option so given his name shall be deemed to have been transferred on the roll of the Bar Council of such State with effect from the date of the option so given for the purposes of the said Act and the rules made thereunder.

25 of 1961.

(2) The persons other than the advocates who are entitled immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, to practise in the common High Court or any subordinate Court thereof shall, on and after the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, be recognised as such persons entitled also to practise in the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura or any subordinate Court thereof, as the case may be.

(3) The right of audience in the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura shall be regulated in accordance with the like principles as immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 are in force with respect to the right of audience in the common High Court.

Right to appear or to act in proceedings transferred to High Courts of Meghalaya, Manipur and Tripura.

11. Any person who, immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, is an advocate entitled to practise or any other person entitled to practise in the common High Court and was authorised to appear in any proceedings transferred from that High Court to the High Court of Meghalaya or the High Court of Manipur or the High Court of Tripura under section 28-I of the North-Eastern Areas (Reorganisation) Act, 1971 shall have the right to appear in the High Court of Meghalaya, or the High Court of Manipur or the High Court of Tripura, as the case may be, in relation to those proceedings.

81 of 1971.

CHAPTER IV

AMENDMENT OF THE STATE OF MIZORAM ACT, 1986

Amendment of Act 34 of 1986.

12. After section 26 of the State of Mizoram Act, 1986, the following section shall be inserted, namely:—

Non-applicability of this Part to the States of Meghalaya, Manipur and Tripura.

"26A. On and from the date of commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, the provisions of sections 15 to 26 (both inclusive) shall not apply to the States of Meghalaya, Manipur and Tripura."

CHAPTER V

AMENDMENT OF THE STATE OF ARUNACHAL PRADESH ACT, 1986

Amendment of Act 69 of 1986.

13. After section 28 of the State of Arunachal Pradesh Act, 1986, the following section shall be inserted, namely:—

“28A. On and from the date of commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, the provisions of sections 18 to 29 (both inclusive) shall not apply to the States of Meghalaya, Manipur and Tripura.”.

Non-applicability of this Part to the States of Meghalaya, Manipur and Tripura.

Sd/-

V. K. BHASIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTH,

Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat
Legislative and Parliamentary Affairs Department
Sachivalaya, Gandhinagar
Dated the 3rd August, 2013.

No.RPB/8-2013/Ord.-08-2013/E :- The following Act of Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 18th July, 2013 is republished for general information:-

Government of India
Ministry of Law and Justice
(Legislative Department)

New Delhi, the 18th July, 2013 Asadha, 27, 1935 (Saka)

THE SECURITIES LAWS (AMENDMENT) ORDINANCE, 2013

No. 8 of 2013

Promulgated by the President in the Sixty-Fourth Year of the Republic of India.

An Ordinance further to amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :-

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Securities Laws (Amendment) Ordinance, 2013.

Short title and commencement.

(2) Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall come into force at once.

CHAPTER II

AMENDMENTS TO THE SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992

15 of 1992.

2. In section 11 of the Securities and Exchange Board of India Act, 1992 (hereafter in this Chapter referred to as the principal Act),—

Amendment of
section 11.

(i) in sub-section (2),

(a) for clause (ia), the following clause shall be substituted, namely:—

“(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;”;

(b) after clause (ia), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 6th day of March, 1998, namely:—

“(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;”;

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) The amount disgorged, pursuant to a direction issued under section 11B or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.”.

42 of 1956.

22 of 1996.

3. In section 11AA of the principal Act,—

Amendment of
section 11AA.

(i) in sub-section (1) —

(a) after the word, brackets and figure "sub-section (2)", the words, brackets, figure and letter "or sub-section (2A)" shall be inserted;

(b) the following proviso shall be inserted, namely:—

"Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.";

(ii) in sub-section (2), in the opening portion, for the word "company", the word "person" shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.";

(iv) in sub-section (3),—

(a) after the word, brackets and figure "sub-section (2)", the words, brackets, figure and letter "or sub-section (2A)" shall be inserted;

(b) after clause (viii), the following clause shall be inserted, namely:—

"(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,".

4. In section 11B of the principal Act, the following *Explanation* shall be inserted, namely:—

Amendment of
section 11B.

"*Explanation.*—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention."

5. In section 11C of the principal Act,—

Amendment of
section 11C.

(i) for sub-section (8), the following sub-section shall be substituted, namely:—

"(8) Where in the course of an investigation, the Investigating Authority has reason to believe that any person or enterprise, as the case may be, to whom a notice under sub-section (3) has been issued or might be issued,—

(a) has omitted or failed to provide the information or produce documents as required in the notice; or

(b) would not provide the information or produce documents which shall be useful for, or relevant to, the investigation; or

(c) would destroy, mutilate, alter, falsify or secrete the information or documents useful for, or relevant to, the investigation,

then, the Chairman may, after being satisfied that it is necessary to do so, authorise the Investigating Authority or any other officer of the Board (the officer so authorised in all cases being hereinafter referred to as the authorised officer), to—

(i) enter and search, with such assistance, as may be required, the building, place, vessel, vehicle or aircraft where such information or documents are expected or believed to be kept;

(ii) break open the lock of any door, box, locker, safe almirah or other receptacle for exercising the powers conferred by sub-clause (i), where the keys thereof are not available;

(iii) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account or other documents;

(iv) require any person who is found to be in possession or control of any books of account or other documents, maintained in the form of electronic record, to provide the authorised officer the necessary facility to inspect such books of account or other documents.

Explanation.— For the purposes of this sub-clause, the expression “electronic record” shall have the meaning assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000. 21 of 2000.

(v) seize any such books of account or other documents found as a result of such search;

(vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(vii) record on oath the statement of any person who is found to be in possession or in control of the information or documents referred to in sub-clauses (i), (iii) and (iv).”;
(ii) for sub-section (9), the following sub-section shall be

substituted, namely,—

“(9) The Board may make regulations in relation to any search or seizure under this section; and in particular, without prejudice to the generality of the foregoing power, such regulations may provide for the procedure to be followed by the authorised officer—

(a) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;

(b) for ensuring safe custody of any books of account or other documents or assets seized.”;

(iii) in sub-section (10), the words “and inform the Magistrate of such return” shall be omitted.

6. After section 15JA of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

Insertion of
new section
15JB.

“15JB. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

Settlement of
administrative
and civil
proceedings.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.

(3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.

(4) No appeal shall lie under section 15T against any order passed by the Board or adjudicating officer, as the case may be, under this section.”

7. In section 15T of the principal Act, sub-section (2) shall be omitted.

Amendment
of section
15T.

8. In section 26 of the principal Act, sub-section (2) shall be omitted.

Amendment
of section
26.

9. After section 26 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
26A, 26B,
26C, 26D
and 26E.

"26A. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

Establishment
of Special
Courts.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

26B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Offences triable
by Special
Courts.

26C. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Appeal and
revision.

26D. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

Application of
Code to
proceedings
before Special
Court.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

26E. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Transitional
provisions.

2 of 1974.

2 of 1974.

2 of 1974.

2 of 1974.

2 of 1974.

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this section.”.

10. After section 28 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
28A.

‘28A. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

Recovery of
amounts.

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

43 of 1961.

and for this purpose, the provisions of sections 221 to 227, 228A, 229, 231, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.—For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of

majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

43 of 1961.

Explanation 2.—Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

43 of 1961.

Explanation 3.—Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.

(4) For the purpose of sub-sections (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

11. In section 30 of the principal Act, in sub-section (2),—

Amendment of
section 30.

(i) after clause (c), the following clauses shall be inserted, namely:—

“(ca) the utilisation of the amount credited under sub-section (5) of section 11;

(cb) the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA;

(cc) the procedure to be followed by the authorised officer for search or seizure under sub-section (9) of section 11C;”;

(ii) after clause (d), the following clauses shall be inserted, namely:—

“(da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;

(db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.”.

CHAPTER III

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

42 of 1956. 12. In section 12A of the Securities Contracts (Regulation) Act, 1956 (hereafter in this Chapter referred to as ‘the principal Act’), the following *Explanation* shall be inserted, namely:—

Amendment of section 12A.

“*Explanation.*—For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.”.

13. After section 23J of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

Insertion of new section 23JA.

“23JA. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

Settlement of administrative and civil proceedings.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.

15 of 1992.

(3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply.

15 of 1992.

(4) No appeal shall lie under section 23L against any order passed by the Board or the adjudicating officer, as the case may be, under this section.”.

14. After section 23JA of the principal Act as so inserted, the following section shall be inserted, namely:—

Insertion of new section 23JB.

“23JB. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 12A or fails to pay any fees due to the Board, the Recovery Officer may draw up

Recovery of amounts.

under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 221 to 227, 228A, 229, 231, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.— Any reference to appeal in Chapter

43 of 1961.

XVIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23L of this Act.

(2) The recovery officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 12A, shall have precedence over any other claim against such person.

(4) For the purposes of sub-section (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing to exercise the powers of a Recovery Officer.'

15. In section 26 of the principal Act, sub-section (2) shall be omitted.

Amendment to section 26.

16. After section 26 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 26A, 26B, 26C, 26D and 26E.

"26A. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

Establishment of Special Courts.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

20 of 1974.

26B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Offences triable by Special Courts.

2 of 1974.

26C. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Appeal and Revision.

2 of 1974.

26D. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

Application of Code to proceedings before Special Court.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

2 of 1974.

26E. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Transitional provisions.

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section."

CHAPTER IV

AMENDMENTS TO THE DEPOSITORY ACT, 1996

22 of 1996.

17. In section 19 of the Depositories Act, 1996 (hereafter in this chapter referred to as the principal Act in this chapter), the following Explanation shall be inserted, namely:-

Amendment of section 19.

"*Explanation.*—For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention."

18. After section 19-I of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:-

Insertion of new section 19-1A.

"19- IA. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 19 or section 19H, as the case may be, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

Settlement of
Administrative
Civil
Proceedings.

15 of 1992.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.

15 of 1992.

(3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply.

(4) No appeal shall lie under section 23A against any order passed by the Board or the adjudicating officer under this section."

19. After section 19-IA of the principal Act as so inserted, the following shall be inserted, namely:—

Insertion of
new section 19-
IB.

"19-IB. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 19 or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely: —

Recovery of
amounts.

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 221 to 227, 228A, 229, 231, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the

43 of 1961.

said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

43 of 1961.

Explanation 2.— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

43 of 1961.

Explanation 3.— Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23A of this Act.

(2) The recovery officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 19, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

20. In section 22 of the principal Act, sub-section (2) shall be omitted.

Amendment of
section 22.

21. After section 22B of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 22C, 22D, 22E, 22F and 22G.

“22C. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

Establishment of Special Courts.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

22D. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Offences triable by Special Courts.

22E. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Appeal and Revision.

22F.(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

Application of Code to proceedings before Special Court.

(2) The person conducting prosecution referred to in subsection (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

22G. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is

Transitional provisions.

2 of 1974.

2 of 1974.

2 of 1974.

2 of 1974. established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section."

22. In section 23A of the principal Act, sub-section (2) shall be omitted. Amendment of section 23A.

Sd/-

Pranab Mukherjee,
President.

Sd/-

P. K. Malhotra,,
Secy. to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,
Secretary to Government.

Government Central Press, Gandhinagar.



सत्यमेव जयते



The Gujarat Government Gazette

EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar,

Dated the 17th August, 2013.

No. RPB/41-2013/Act.-1-13-/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 4th January, 2013/Pausa 14, 1934(Sake)

The following Act of Parliament has received the assent of the President on the 3rd January, 2013 is hereby published for general information :-

THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS (AMENDMENT) ACT 2012.

(Act No. 1 of 2013)

[3rd January, 2013]

further to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows :-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND
ENFORCEMENT OF SECURITY INTEREST ACT, 2002Amendment
of section 2.

2. In section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter in this Chapter referred to as the principal Act), in clause (c), after sub-clause (iv), the following sub-clause shall be inserted, namely:—

“(iva) a multi-State co-operative bank; or”.

Amendment
of section 5.

3. In section 5 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) On acquisition of financial assets under sub-section (1), the securitisation company or reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the securitisation company or reconstruction company in such pending suit, appeal or other proceedings.”.

Amendment
of section 9.

4. In section 9 of the principal Act, after clause (f), the following clause shall be inserted, namely:—

“(g) to convert any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.”.

Amendment
of section 13.

5. In section 13 of the principal Act,—

(a) in sub-section (3A), for the words “within one week”, the words “within fifteen days” shall be substituted;

(b) after sub-section (5), the following sub-sections shall be inserted, namely:—

“(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

(5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.

(5C) The provisions of section 9 of the Banking Regulation Act, 1949 shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).”.

(c) in the opening portion of sub-section (9), and in the *Explanation* thereto, for the word “three-fourth”, occurring at both the places, the words “sixty per cent.” shall be substituted.

Amendment
of section 14.

6. In section 14 of the principal Act,—

(a) in sub-section (1), the following provisos shall be inserted, namely:—

“Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the

secured creditor, declaring that—

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.”;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.”;

(c) in sub-section (3), after the words “the District Magistrate”, the words “any officer authorised by the Chief Metropolitan Magistrate or District Magistrate” shall be inserted.

7. After section 18B of the principal Act, the following section shall be inserted, namely:—

“18C. (1) Where an application or an appeal is expected to be made or has been made under sub-section (1) of section 17 or section 17A or sub-section (1) of section

Insertion of
new section
18C.

Right to lodge
a caveat.

18 or section 18B, the secured creditor or any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1),—

(a) the secured creditor by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1);

(b) any person by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1).

(3) Where after a caveat has been lodged under sub-section (1), any application or appeal is filed before the Tribunal or the court of District Judge or the Appellate Tribunal or the High Court, as the case may be, the Tribunal or the District Judge or the Appellate Tribunal or the High Court, as the case may be, shall serve a notice of application or appeal filed by the applicant or the appellant on the caveator.

(4) Where a notice of any caveat has been served on the applicant or the Appellant, he shall periodically furnish the caveator with a copy of the application or the appeal made by him and also with copies of any paper or document which has been or may be filed by him in support of the application or the appeal.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of the period of ninety days from the date on which it was lodged unless the application or appeal referred to in sub-section (1) has been made before the expiry of the said period.”

Amendment
of section 23.

8. In section 23 of the principal Act, after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the Central Government may, by notification, require registration of all transactions of securitisation, or asset reconstruction or creation of security interest which are subsisting on or before the date of establishment of the Central Registry under sub-section (1) of section 20 within such period and on payment of such fees as may be prescribed.”

Insertion of
new section
26A.

9. After section 26 of the principal Act, the following section shall be inserted, namely:—

“26A. (1) The Central Government, on being satisfied—

(a) that the omission to file with the Registrar the particulars of any transaction of securitisation, asset reconstruction or security interest or modification or satisfaction of such transaction or; the omission or mis-statement of any particular with respect to any such transaction or modification or with respect to any satisfaction or other entry made in pursuance of section 23 or section 24 or section 25 of the principal Act was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors; or

(b) that on other grounds, it is just and equitable to grant relief,

may, on the application of a secured creditor or securitisation company or reconstruction company or any other person interested on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for

Rectification
by Central
Government
in matters of
registration,
modification
and
satisfaction,
etc.

filing of the particulars of the transaction for registration or modification or satisfaction shall be extended or, as the case may require, the omission or mis-statement shall be rectified.

(2) Where the Central Government extends the time for the registration of transaction of security interest or securitisation or asset reconstruction or modification or satisfaction thereof, the order shall not prejudice any rights acquired in respect of the property concerned or financial asset before the transaction is actually registered.”

10. For section 30 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 30.

“30. (1) No court shall take cognizance of any offence punishable under section 27 in relation to non-compliance with the provisions of section 23, section 24 or section 25 or under section 28 or section 29 or any other provisions of the Act, except upon a complaint in writing made by an officer of the Central Registry or an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Central Registrar or, as the case may be, the Reserve Bank.

Cognizance of offences.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.”

11. After section 31 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 31A.

“31A. (1) The Central Government may, by notification in the public interest, direct that any of the provisions of this Act,—

Power to exempt a class or classes of banks or financial institutions.

(a) shall not apply to such class or classes of banks or financial institutions; or

(b) shall apply to the class or classes of banks or financial institutions with such exceptions, modifications and adaptations,

as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.”

CHAPTER III

AMENDMENTS TO THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

51 of 1993.

12. In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (hereafter in this Chapter referred to as the principal Act), in section 2, in clause (d), after sub-clause (v), the following sub-clause shall be inserted, namely:—

Amendment of section 2.

“(vi) a multi-State co-operative bank;”

13. In section 15 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:—

Amendment of section 15.

“Provided that the Central Government, during the pendency of the inquiry against the Presiding Officer or a Chairperson, as the case may be, may, after consulting the Chairperson of the Selection Committee constituted for selection of Presiding Officer or

Chairperson, pass an order suspending the Presiding Officer or the Chairperson, if it is satisfied that he should cease to discharge his functions as a Presiding Officer or Chairperson, as the case may be."

Amendment
of section 18.

14. In section 18 of the principal Act, the following proviso shall be inserted, namely:—

"Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings."

39 of 2002.

Amendment
of section 19.

15. In section 19 of the principal Act,—

(a) after sub-section (1), the following sub-sections shall be inserted, namely:—

"(1A) Every bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2, may, at its option, opt to initiate proceedings under the Multi-State Co-operative Societies Act, 2002 to recover debts, whether due before or after the date of commencement of the Enforcement of the Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 from any person instead of making an application under this Chapter.

39 of 2002.

(1B) In case, a bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2 has filed an application under this Chapter and subsequently opts to withdraw the application for the purpose of initiating proceeding under the Multi-State Co-operative Societies Act, 2002 to recover debts, it may do so with the permission of the Tribunal and every such application seeking permission from the Tribunal to withdraw the application made under sub-section (1A) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

39 of 2002.

Provided that in case the Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor."

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) If any application filed before the Tribunal for recovery of any debt is settled prior to the commencement of the hearing before that Tribunal or at any stage of the proceedings before the final order is passed, the applicant may be granted refund of the fees paid by him at such rates as may be prescribed."

(c) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) The defendant shall, within a period of thirty days from the date of service of summons, present a written statement of this defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days; the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, allow not more than two extensions to the defendant to file the written statement."

(d) after sub-section (5), the following sub-section shall be inserted, namely:—

"(5A) After hearing of the application has commenced, it shall be continued from day-to-day until the hearing is concluded:

Provided that the Tribunal may grant adjournments if sufficient cause is shown, but no such adjournment shall be granted more than three times to a party and where there are three or more parties, the total number of such adjournments shall not exceed six:

Provided further that, the Presiding Officer may grant such adjournments

on imposing such costs as may be considered necessary.”;

(e) after sub-section (20), the following sub-section shall be inserted, namely:—

“(20A) Where it is proved to the satisfaction of the Tribunal that the claim of the applicant has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant has repaid or agreed to repay the claim of the applicant, the Tribunal shall pass orders recording such agreement, compromise or satisfaction of the claim.”.

16. In section 31 of the principal Act, after the proviso, the following proviso shall be inserted, namely:—

Amendment
of section 31.

“Provided further that any recovery proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002, shall be continued and nothing contained in this section shall apply to such proceedings.”.

39 of 2002.

17. In section 36 of the principal Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

Amendment
of section 36.

“(cc) the rate of fee to be refunded to the applicant under sub-section (3A) of section 19 of the Act.”.

Sd/-

P.K.Malhotra,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. Gothi ,
Secretary to Government .

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 17th August, 2013.

No. RPB/42-2013/98-Amen-13/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 2nd January, 2013/Pausa 12, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 1st January, 2013 is hereby published for general information:-

THE CONSTITUTION (NINETY-EIGHTH AMENDMENT)

ACT, 2012

AN

ACT

[1st January, 2013]

further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Ninety-eighth Amendment) Act, 2012. Short title and commencement.
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. After article 371-I of the Constitution, the following article shall be inserted, Insertion of new article 371J.
namely :-
"371 J. (1) The President may, by order made with respect to the State of Karnataka, provide for any special responsibility of the Governor for—
(a) establishment of a separate development board for Hyderabad-Karnataka region with the provision that a report on the working of the board will be placed each year before the State Legislative Assembly; Special provisions with respect to State of Karnataka.

(b) equitable allocation of funds for developmental expenditure over the said region, subject to the requirements of the State as a whole; and

(c) equitable opportunities and facilities for the people belonging to the said region, in matters of public employment, education and vocational training, subject to the requirements of the State as a whole.

(2) An order made under sub-clause (c) of clause (1) may provide for—

(a) reservation of a proportion of seats in educational and vocational training institutions in the Hyderabad-Karnataka region for students who belong to that region by birth or by domicile; and

(b) identification of posts or classes of posts under the State Government and in any body or organisation under the control of the State Government in the Hyderabad-Karnataka region and reservation of a proportion of such posts for persons who belong to that region by birth or by domicile and for appointment thereto by direct recruitment or by promotion or in any other manner as may be specified in the order."

Sd/-

P. K. MALHOTRA,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTH,

Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 17th August, 2013.

No. RPB/40-2013/Act-13-13/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 2nd April, 2013/Chaitra 12, 1935 (Sake)

The following Act of Parliament has received the assent of the President on the 2nd April, 2013 is hereby published for general information:-

THE CRIMINAL LAW (AMENDMENT)

ACT, 2013

AN

(Act No. 13 of 2013)

ACT

[2nd April, 2013]

further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Criminal Law (Amendment) Act, 2013.

Short title and
commencement.

(2) It shall be deemed to have come into force on the 3rd day of February, 2013.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE

45 of 1860

2. In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in section 100, after clause *Sixthly*, the following clause shall be inserted, namely:—

Amendment of
section 100.

"Seventhly.—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act".

Insertion of new sections 166A and 166B.

3. After section 166 of the Penal Code, the following sections shall be inserted, namely:—

Public servant disobeying direction under law.

"166A. Whoever, being a public servant,—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509,

2 of 1974.

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

Punishment for non-treatment of victim.

166B. Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both."

2 of 1974.

Amendment of section 228A.

4. In section 228A of the Penal Code, in sub-section (1), for the words, figures and letters "offence under section 376, section 376A, section 376B, section 376C or section 376D", the words, figures and letters "offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E" shall be substituted.

Insertion of new sections 326A and 326B.

5. After section 326 of the Penal Code, the following sections shall be inserted, namely:—

Voluntarily causing grievous hurt by use of acid, etc.

326A. Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Voluntarily throwing or attempting to throw acid.

326B. Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.—For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.'

6. In section 354 of the Penal Code, for the words "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both", the words "shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine" shall be substituted.

Amendment
of section
354.

7. After section 354 of the Penal Code, the following sections shall be inserted, namely:—

Insertion of
new sections
354A, 354B,
354C and
354D.

354A. (1) A man committing any of the following acts—

Sexual
harassment
and
punishment
for sexual
harassment.

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

354B. Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

Assault or use
of criminal
force to
woman with
intent to
disrobe.

354C. Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Voyeurism.

Explanation 1.—For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

354D. (1) Any man who—

Stalking.

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication,

commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Substitution of
new sections
370 and 370A
for section
370.

8. For section 370 of the Penal Code, the following sections shall be substituted, namely:—

Trafficking of
person.

370. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

Explanation 1.—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

370A. (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

Exploitation
of a trafficked
person.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

9. For sections 375, 376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted, namely:—

Substitution of
new sections
for sections
375, 376,
376A, 376B,
376C and
376D.

'375. A man is said to commit "rape" if he—

Rape.

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include *labia majora*.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Punishment
for rape.

376. (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape on a woman when she is under sixteen years of age;

or

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

376A. Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

Punishment for causing death or resulting in persistent vegetative state of victim.

376B. Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Sexual intercourse by husband upon his wife during separation.

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

376C. Whoever, being—

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Sexual intercourse by a person in authority.

Explanation 1.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2.—For the purposes of this section, *Explanation 1* to section 375 shall also be applicable.

Explanation 3.—"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.—The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in *Explanation* to sub-section (2) of section 376.

Gang rape.

376D. Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Punishment for repeat offenders.

376E. Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

Amendment of section 509.

10. In section 509 of the Penal Code, for the words "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both", the words "shall be punished with simple imprisonment for a term which may extend to three years, and also with fine" shall be substituted.

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment of section 26.

11. In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), in section 26, in the proviso to clause (a), for the words, figures and letters "offence under section 376 and sections 376A to 376D of the Indian Penal Code", the words, figures and letters "offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code" shall be substituted.

2 of 1974.

45 of 1860.

Amendment of section 54A.

12. In section 54A of the Code of Criminal Procedure, the following provisos shall be inserted, namely:—

"Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed."

13. In section 154 of the Code of Criminal Procedure, in sub-section (1), the following provisos shall be inserted, namely:—

Amendment
of section
154.

45 of 1860.

"Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

45 of 1860.

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible."

14. In section 160 of the Code of Criminal Procedure, in sub-section (1), in the proviso, for the words "under the age of fifteen years or woman", the words "under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person" shall be substituted.

Amendment
of section
160.

15. In section 161 of the Code of Criminal Procedure, in sub-section (3), after the proviso, the following proviso shall be inserted, namely:—

Amendment
of section
161.

45 of 1860.

"Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer."

16. In section 164 of the Code of Criminal Procedure, after sub-section (5), the following sub-section shall be inserted, namely:—

Amendment
of section
164.

45 of 1860.

"(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed.

	(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial."	1 of 1872.
Amendment of section 173.	17. In section 173 of the Code of Criminal Procedure, in sub-section (2), in sub-clause (i) of clause (i), for the words, figures and letter "or 376D of the Indian Penal Code", the words, figures and letters " 376D or section 376E of the Indian Penal Code" shall be substituted.	45 of 1860.
Amendment of section 197.	18. In section 197 of the Code of Criminal Procedure, after sub-section (1), the following <i>Explanation</i> shall be inserted, namely:— " <i>Explanation.</i> —For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code."	45 of 1860.
Insertion of new section 198B. Cognizance of offence.	19. After section 198A of the Code of Criminal Procedure, the following section shall be inserted, namely:— "198B. No Court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code where the persons are in a marital relationship, except upon <i>prima facie</i> satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband."	45 of 1860.
Amendment of section 273.	20. In section 273 of the Code of Criminal Procedure, before the <i>Explanation</i> , the following proviso shall be inserted, namely:— "Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused."	
Amendment of section 309.	21. In section 309 of the Code of Criminal Procedure, for sub-section (1), the following sub-section shall be substituted, namely:— "(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded: Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet."	45 of 1860.
Amendment of section 327.	22. In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letter "or section 376D of the Indian Penal Code", the words, figures and letters "section 376D or section 376E of the Indian Penal Code" shall be substituted.	45 of 1860.
Insertion of new sections 357B and 357C. Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code.	23. After section 357A of the Code of Criminal Procedure, the following sections shall be inserted, namely:— "357B. The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code.	45 of 1860.
Treatment of victims.	357C. All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident."	45 of 1860.

45 of 1860.

24. In the First Schedule to the Code of Criminal Procedure, under the heading "I.—OFFENCES UNDER THE INDIAN PENAL CODE",—

Amendment
of First
Schedule.

(a) after the entries relating to section 166, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"166A	Public servant disobeying direction under law.	Imprisonment for minimum 6 months which may extend to 2 years and fine.	Cognizable	Bailable	Magistrate of the first class.
166B	Non-treatment of victim by hospital.	Imprisonment for 1 year or fine or both.	Non-cognizable	Bailable	Magistrate of the first class.";

(b) after the entries relating to section 326, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"326A	Voluntarily causing grievous hurt by use of acid, etc.	Imprisonment for not less than 10 years but which may extend to imprisonment for life and fine to be paid to the victim.	Cognizable	Non-bailable	Court of Session.
326B	Voluntarily throwing or attempting to throw acid.	Imprisonment for 5 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Court of Session.";

(c) for the entries relating to section 354, the following entries shall be substituted, namely:—

1	2	3	4	5	6
"354	Assault or use of criminal force to woman with intent to outrage her modesty.	Imprisonment of 1 year which may extend to 5 years, and with fine.	Cognizable	Non-bailable	Any Magistrate.
354A	Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours, showing pornography.	Imprisonment which may extend to 3 years or with fine or with both.	Cognizable	Bailable	Any Magistrate.
	Sexual harassment of the nature of making sexually coloured remark.	Imprisonment which may extend to 1 year or with fine or with both.	Cognizable	Bailable	Any Magistrate.

1	2	3	4	5	6
354B	Assault or use of criminal force to woman with intent to disrobe.	Imprisonment of not less than 3 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Any Magistrate.
354C	Voyeurism.	Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction.	Cognizable	Bailable	Any Magistrate.
		Imprisonment of not less than 3 years but which may extend to 7 years and with fine for second or subsequent conviction.	Cognizable	Non-bailable	Any Magistrate.
354D	Stalking.	Imprisonment up to 3 years and with fine for first conviction.	Cognizable	Bailable	Any Magistrate.
		Imprisonment up to 5 years and with fine for second or subsequent conviction.	Cognizable	Non-bailable	Any Magistrate."

(d) for the entries relating to section 370, the following entries shall be substituted, namely:—

1	2	3	4	5	6
370	Trafficking of person.	Imprisonment of not less than 7 years but which may extend to 10 years and with fine.	Cognizable	Non-bailable	Court of Session.
	Trafficking of more than one person.	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.
	Trafficking of a minor.	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.
	Trafficking of more than one minor.	Imprisonment of not less than 14 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.

1	2	3	4	5	6
	Person convicted of offence of trafficking of minor on more than one occasion.	Imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.
	Public servant or a police officer involved in trafficking of minor.	Imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.
370A	Exploitation of a trafficked child.	Imprisonment of not less than 5 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Court of Session.
	Exploitation of a trafficked person.	Imprisonment of not less than 3 years but which may extend to 5 years and with fine.	Cognizable	Non-bailable	Court of Session.";

(e) for the entries relating to sections 376, 376A, 376B, 376C and 376D, the following entries shall be substituted, namely:—

1	2	3	4	5	6
376	Rape.	Rigorous imprisonment of not less than 7 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.
	Rape by a police officer or a public servant or member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped.	Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.

1	2	3	4	5	6
376A	Person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state.	Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session.
376B	Sexual intercourse by husband upon his wife during separation.	Imprisonment for not less than 2 years but which may extend to 7 years and with fine.	Cognizable (but only on the complaint of the victim)	Bailable	Court of Session.
376C	Sexual intercourse by a person in authority.	Rigorous imprisonment for not less than 5 years but which may extend to 10 years and with fine.	Cognizable	Non-bailable	Court of Session.
376D	Gang rape.	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine to be paid to the victim.	Cognizable	Non-bailable	Court of Session.
376E	Repeat offenders.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session.;

(f) in entry relating to section 509, in column 3, for the words "Simple imprisonment for one year, or fine, or both," the words and figure "Simple imprisonment for 3 years and with fine " shall be substituted.

CHAPTER IV

AMENDMENTS TO THE INDIAN EVIDENCE ACT, 1872

1 of 1872.

25. After section 53 of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), the following section shall be inserted, namely:—

Insertion of new section 53A.

45 of 1860.

"53A. In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent."

Evidence of character or previous sexual experience not relevant in certain cases.

26. For section 114A of the Evidence Act, the following section shall be substituted, namely:—

Substitution of new section for section 114A.

45 of 1860.

"114A. In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Presumption as to absence of consent in certain prosecution for rape.

45 of 1860.

Explanation.— In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code.' .

27. For section 119 of the Evidence Act, the following section shall be substituted, namely:—

Substitution of new section for section 119.

"119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Witness unable to communicate verbally.

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed."

28. In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted, namely:—

Amendment of section 146.

45 of 1860.

"Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent."

CHAPTER V

AMENDMENT TO THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Substitution
of new
sections for
section 42.

Alternate
punishment.

Act not in
derogation of
any other law.

29. For section 42 of the Protection of Children from Sexual Offences Act, 2012, the following sections shall be substituted, namely:—

“42. Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree. 45 of 1860.

42A. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.”

CHAPTER VI

MISCELLANEOUS

Repeal and
savings.

30. (1) The Criminal Law (Amendment) Ordinance, 2013 is hereby repealed. Ord. 3 of 2013.

(2) Notwithstanding such repeal, anything done or any action taken under the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act. 45 of 1860.
2 of 1974.
1 of 1872.

Sd/-

P.K. Malhotra,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

C. J. Gothi,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. LIV]

SATURDAY, AUGUST 17, 2013/SRAVANA 26, 1935

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 17th August, 2013.

No. RPB/39-2013/Act.-14-13/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 23rd April, 2013, Vaisakha 12, 1935 (Sake)

The following Act of Parliament has received the assent of the President on the 22nd April, 2013, is hereby published for general information:-

THE SEXUAL HARASSMENT OF WOMAN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

AN

(Act No. 14 of 2013)

ACT

[22nd April, 2013]

to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaint of sexual harassment and for matters connected therewith or incidental thereto

Whereas sexual harassment results in violation of the fundamental right of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

And Whereas the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

Any where As it is expenditure to make provision for giving effect to the said convention for protection of women against sexual harassment at workplace.

Be it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commencement.

1. (1) This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “aggrieved woman” means—

(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

(b) “appropriate Government” means—

(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—

(A) by the Central Government or the Union territory administration, the Central Government;

(B) by the State Government, the State Government;

(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

(c) “Chairperson” means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of section 7;

(d) “District Officer” means an officer notified under section 5;

(e) “domestic worker” means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

(f) “employee” means a person employed at a workplace for any work on regular, temporary, *ad hoc* or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

(g) “employer” means—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation.—For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

(h) “Internal Committee” means an Internal Complaints Committee constituted under section 4;

(i) “Local Committee” means the Local Complaints Committee constituted under section 6;

(j) “Member” means a Member of the Internal Committee or the Local Committee, as the case may be;

(k) “prescribed” means prescribed by rules made under this Act;

(l) “Presiding Officer” means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;

(m) “respondent” means a person against whom the aggrieved woman has made a complaint under section 9;

(n) “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(o) “workplace” includes—

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(vi) a dwelling place or a house;

(p) "unorganised sector" in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

Prevention of
sexual
harassment.

3. (1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:—

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

CHAPTER II

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

Constitution
of Internal
Complaints
Committee.

4. (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely:—

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,—

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

CHAPTER III

CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

5. The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

Notification of District Officer.

6. (1) Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

Constitution and jurisdiction of Local Complaints Committee.

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.

(3) The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

7. (1) The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely:—

Composition, tenure and other terms and conditions of Local Complaints Committee.

(a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

(b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;

(c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member *ex officio*.

(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

(3) Where the Chairperson or any Member of the Local Complaints Committee —

- (a) contravenes the provisions of section 16; or
- (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- (c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- (d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(4) The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

Grants and
audit.

8. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in sub-section (4) of section 7.

(2) The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.

(3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.

(4) The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

CHAPTER IV

COMPLAINT

Complaint of
sexual
harassment.

9. (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Conciliation.

10. (1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where a settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

11. (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if *prima facie* case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:

Inquiry into complaint.

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

CHAPTER V

INQUIRY INTO COMPLAINT

12. (1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to—

Action during pendency of inquiry.

(a) transfer the aggrieved woman or the respondent to any other workplace; or

45 of 1860.

45 of 1860.

5 of 1908.

(b) grant leave to the aggrieved woman up to a period of three months; or

(c) grant such other relief to the aggrieved woman as may be prescribed.

(2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

Inquiry report.

13. (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

Punishment
for false or
malicious
complaint and
false evidence.

14. (1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

15. For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to—

Determination of compensation.

(a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;

(b) the loss in the career opportunity due to the incident of sexual harassment;

(c) medical expenses incurred by the victim for physical or psychiatric treatment;

(d) the income and financial status of the respondent;

(e) feasibility of such payment in lump sum or in instalments.

22 of 2005.

16. Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Prohibition of publication or making known contents of complaint and inquiry proceedings.

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

17. Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

Penalty for publication or making known contents of complaint and inquiry proceedings.

18. (1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

Appeal.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

CHAPTER VI

DUTIES OF EMPLOYER

19. Every employer shall—

Duties of employer.

(a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;

(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force; 45 of 1860.

(h) cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place; 45 of 1860.

(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) monitor the timely submission of reports by the Internal Committee.

CHAPTER VII

DUTIES AND POWERS OF DISTRICT OFFICER

Duties and Powers of District Officer.

20. The District Officer shall,—

(a) monitor the timely submission of reports furnished by the Local Committee;

(b) take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

CHAPTER VIII

MISCELLANEOUS

Committee to submit annual report.

21. (1) The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

(2) The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government.

Employer to include information in annual report.

22. The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Appropriate Government to monitor implementation and maintain data.

23. The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

Appropriate Government to take measures to publicise the Act.

24. The appropriate Government may, subject to the availability of financial and other resources,—

(a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace;

(b) formulate orientation and training programmes for the members of the Local Complaints Committee.

25. (1) The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing,—

Power to call for information and inspection of records.

(a) call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;

(b) authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

(2) Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

26. (1) Where the employer fails to—

Penalty for non-compliance with provisions of Act.

(a) constitute an Internal Committee under sub-section (1) of section 4;

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to—

(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

27. (1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.

Cognizance of offence by courts.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Every offence under this Act shall be non-cognizable.

28. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in derogation of any other law.

29. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power of appropriate Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the fees or allowances to be paid to the Members under sub-section (4) of section 4;

(b) nomination of members under clause (c) of sub-section (1) of section 7;

(c) the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;

- (d) the person who may make complaint under sub-section (2) of section 9;
- (e) the manner of inquiry under sub-section (1) of section 11;
- (f) the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
- (g) the relief to be recommended under clause (c) of sub-section (1) of section 12;
- (h) the manner of action to be taken under clause (i) of sub-section (3) of section 13;
- (i) the manner of action to be taken under sub-sections (1) and (2) of section 14;
- (j) the manner of action to be taken under section 17;
- (k) the manner of appeal under sub-section (1) of section 18;
- (l) the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and
- (m) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (1) of section 21.

(3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Any rule made under sub-section (4) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to
remove
difficulties.

30. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Sd/-
P.K. Malhotra,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. Gothi,
Secretary to Government.



सत्यमेव जयते



The Gujarat Government Gazette

EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 17th August, 2013.

No. RPB/43-2013/Act.-17-13/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 10th May, 2013, Vaisakha 20, 1935 (Sake)

The following Act of Parliament has received the assent of the President on the 10th May, 2013, is hereby published for general information:-

THE FINANCE ACT, 2013

AN

(Act No. 17 of 2013)

ACT

[10th May, 2013]

to give effect to the financial proposals of the Central Government for the financial year 2013-2014.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Finance Act, 2013.

(2) Save as otherwise provided in this Act, sections 2 to 63 shall be deemed to have come into force on the 1st day of April, 2013.

Short title and
commencement.

CHAPTER II

RATES OF INCOME-TAX

Income-tax.

2. (1) Subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on the 1st day of April, 2013, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax shall be increased by a surcharge, for purposes of the Union, calculated in each case in the manner provided therein.

(2) In the cases to which Paragraph A of Part I of the First Schedule applies, where the assessee has, in the previous year, any net agricultural income exceeding five thousand rupees, in addition to total income, and the total income exceeds two lakh rupees, then,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first two lakh rupees of the total income but without being liable to tax], only for the purpose of charging income-tax in respect of the total income; and

(b) the income-tax chargeable shall be calculated as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of two lakh rupees, and the amount of income-tax shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income as so increased were the total income;

(iii) the amount of income-tax determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax in respect of the total income:

Provided that in the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year, referred to in item (II) of Paragraph A of Part I of the First Schedule, the provisions of this sub-section shall have effect as if for the words "two lakh rupees", the words "two lakh fifty thousand rupees" had been substituted:

Provided further that in the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year, referred to in item (III) of Paragraph A of Part I of the First Schedule, the provisions of this sub-section shall have effect as if for the words "two lakh rupees", the words "five lakh rupees" had been substituted.

(3) In cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or section 115JC or sub-section (14) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be:

43 of 1961.

Provided that the amount of income-tax computed in accordance with the provisions of section 111A or section 112 shall be increased by a surcharge, for purposes of the Union, as provided in Paragraph E of Part I of the First Schedule:

Provided further that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115BBC, 115BBD, 115BBE or 115JB of the Income-tax Act, the amount of income-tax computed under this sub-section shall be increased by a surcharge, for purposes of the Union, calculated,—

(a) in the case of a domestic company, at the rate of five per cent. of such income-tax where the total income exceeds one crore rupees;

(b) in the case of every company, other than a domestic company, at the rate of two per cent. of such income-tax where the total income exceeds one crore rupees:

Provided also that in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, and such income exceeds one crore rupees, the total amount payable as income-tax and surcharge on such income-tax shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

(4) In cases in which tax has to be charged and paid under section 115-O or section 115QA or sub-section (2) of section 115R or section 115TA of the Income-tax Act, the tax shall be charged and paid at the rates as specified in those sections and shall be increased by a surcharge, for purposes of the Union, calculated at the rate of ten per cent. of such tax.

(5) In cases in which tax has to be deducted under sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, at the rates in force, the deductions shall be made at the rates specified in Part II of the First Schedule and shall be increased by a surcharge, for purposes of the Union, calculated in cases wherever prescribed, in the manner provided therein.

(6) In cases in which tax has to be deducted under sections 194C, 194E, 194EE, 194F, 194G, 194H, 194-I, 194-IA, 194J, 194LA, 194LB, 194LC, 194LD, 196B, 196C and 196D of the Income-tax Act, the deductions shall be made at the rates specified in those sections and shall be increased by a surcharge, for purposes of the Union,—

(a) in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, or co-operative society or firm, being a non-resident, calculated at the rate of ten per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees;

(b) in the case of every company, other than a domestic company, calculated,—

(i) at the rate of two per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees;

(ii) at the rate of five per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten crore rupees.

(7) In cases in which tax has to be collected under the proviso to section 194B of the Income-tax Act, the collection shall be made at the rates specified in Part II of the First Schedule, and shall be increased by a surcharge, for purposes of the Union, calculated, in cases wherever prescribed, in the manner provided therein.

(8) In cases in which tax has to be collected under section 206C of the Income-tax Act, the collection shall be made at the rates specified in that section and shall be increased by

a surcharge, for purposes of the Union,—

(a) in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, or co-operative society or firm, being a non-resident, calculated at the rate of ten per cent. of such tax, where the amount or the aggregate of such amounts collected and subject to the collection exceeds one crore rupees;

(b) in the case of every company, other than a domestic company, calculated,—

(i) at the rate of two per cent. of such tax, where the amount or the aggregate of such amounts collected and subject to the collection exceeds one crore rupees but does not exceed ten crore rupees;

(ii) at the rate of five per cent. of such tax, where the amount or the aggregate of such amounts collected and subject to the collection exceeds ten crore rupees.

(9) Subject to the provisions of sub-section (10), in cases in which income-tax has to be charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the Income-tax Act or deducted from, or paid on, income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be so charged, deducted or computed at the rate or rates specified in Part III of the First Schedule and such tax shall be increased by a surcharge, for purposes of the Union, calculated in such cases and in such manner as provided therein:

Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or section 115JC or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, "advance tax" shall be computed with reference to the rates imposed by this sub-section or the rates as specified in that Chapter or section, as the case may be:

Provided further that the amount of "advance tax" computed in accordance with the provisions of section 111A or section 112 of the Income-tax Act shall be increased by a surcharge, for purposes of the Union, as provided in Paragraph A, B, C, D or E of Part III of the First Schedule:

Provided also that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115BBC, 115BBD, 115BBE, 115E, 115JB and 115JC of the Income-tax Act, "advance tax" computed under the first proviso shall be increased by a surcharge, for purposes of the Union, calculated,—

(a) in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, or co-operative society or firm or local authority, calculated at the rate of ten per cent. of such "advance tax", where the total income exceeds one crore rupees;

(b) in the case of every domestic company, calculated,—

(i) at the rate of five per cent. of such "advance tax", where the total income exceeds one crore rupees but does not exceed ten crore rupees;

(ii) at the rate of ten per cent. of such "advance tax", where the total income exceeds ten crore rupees;

(c) in the case of every company, other than a domestic company, calculated,—

(i) at the rate of two per cent. of such “advance tax”, where the total income exceeds one crore rupees but does not exceed ten crore rupees;

(ii) at the rate of five per cent. of such “advance tax”, where the total income exceeds ten crore rupees:

Provided also that in the case of persons mentioned in (a) above, having total income chargeable to tax under section 115JC of the Income-tax Act, and such income exceeds one crore rupees, the total amount payable as “advance tax” on such income and surcharge thereon shall not exceed the total amount payable as “advance tax” on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees:

Provided also that in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, and such income exceeds one crore rupees but does not exceed ten crore rupees, the total amount payable as “advance tax” on such income and surcharge thereon, shall not exceed the total amount payable as “advance tax” on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees:

Provided also that in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, and such income exceeds ten crore rupees, the total amount payable as “advance tax” on such income and surcharge thereon, shall not exceed the total amount payable as “advance tax” and surcharge on a total income of ten crore rupees by more than the amount of income that exceeds ten crore rupees.

(10) In cases to which Paragraph A of Part III of the First Schedule applies, where the assessee has, in the previous year or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any net agricultural income exceeding five thousand rupees, in addition to total income and the total income exceeds two lakh rupees, then, in charging income-tax under sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or in computing the “advance tax” payable under Chapter XVII-C of the said Act, at the rate or rates in force,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first two lakh rupees of the total income but without being liable to tax], only for the purpose of charging or computing such income-tax or, as the case may be, “advance tax” in respect of the total income; and

(b) such income-tax or, as the case may be, “advance tax” shall be so charged or computed as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax or “advance tax” shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of two lakh rupees, and the amount of income-tax or “advance tax” shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income were the total income;

(iii) the amount of income-tax or “advance tax” determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax or, as the case may be, “advance tax” determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax or, as the case may be, “advance tax” in respect of the total income:

Provided that in the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year, referred to in item (II) of Paragraph A of Part III of the First Schedule, the provisions of this sub-section shall have effect as if for the words "two lakh rupees", the words "two lakh fifty thousand rupees" had been substituted:

Provided further that in the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year, referred to in item (III) of Paragraph A of Part III of the First Schedule, the provisions of this sub-section shall have effect as if for the words "two lakh rupees", the words "five lakh rupees" had been substituted:

Provided also that the amount of income-tax or "advance tax" so arrived at, shall be increased by a surcharge for purposes of the Union calculated in each case, in the manner provided therein.

(11) The amount of income-tax as specified in sub-sections (1) to (10) and as increased by the applicable surcharge, for purposes of the Union, calculated in the manner provided therein, shall be further increased by an additional surcharge, for purposes of the Union, to be called the "Education Cess on income-tax", calculated at the rate of two per cent. of such income-tax and surcharge so as to fulfil the commitment of the Government to provide and finance universalised quality basic education:

Provided that nothing contained in this sub-section shall apply to cases in which tax is to be deducted or collected under the sections of the Income-tax Act mentioned in sub-sections (5), (6), (7) and (8), if the income subjected to deduction of tax at source or collection of tax at source is paid to a domestic company and any other person who is resident in India.

(12) The amount of income-tax as specified in sub-sections (1) to (10) and as increased by the applicable surcharge, for purposes of the Union, calculated in the manner provided therein, shall also be increased by an additional surcharge, for purposes of the Union, to be called the "Secondary and Higher Education Cess on income-tax", calculated at the rate of one per cent. of such income-tax and surcharge so as to fulfil the commitment of the Government to provide and finance secondary and higher education:

Provided that nothing contained in this sub-section shall apply to cases in which tax is to be deducted or collected under the sections of the Income-tax Act mentioned in sub-sections (5), (6), (7) and (8), if the income subjected to deduction of tax at source or collection of tax at source is paid to a domestic company and any other person who is resident in India.

(13) For the purposes of this section and the First Schedule,—

(a) "domestic company" means an Indian company or any other company which, in respect of its income liable to income-tax under the Income-tax Act, for the assessment year commencing on the 1st day of April, 2013, has made the prescribed arrangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income;

(b) "insurance commission" means any remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance);

(c) "net agricultural income", in relation to a person, means the total amount of agricultural income, from whatever source derived, of that person computed in accordance with the rules contained in Part IV of the First Schedule;

(d) all other words and expressions used in this section and the First Schedule but not defined in this sub-section and defined in the Income-tax Act shall have the meanings, respectively, assigned to them in that Act.

CHAPTER III

DIRECT TAXES

Income-tax

3. In section 2 of the Income-tax Act, with effect from the 1st day of April, 2014,—

Amendment of
section 2.

(a) in clause (1A),—

(I) in sub-clause (c), in the proviso, in clause (ii),—

(i) in item (A), the words “according to the last preceding census of which the relevant figures have been published before the first day of the previous year” shall be omitted;

(ii) for item (B), the following item shall be substituted, namely:—

“(B) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.”;

(2) after *Explanation 3*, the following *Explanation* shall be inserted, namely:—

Explanation 4.—For the purposes of clause (ii) of the proviso to sub-clause (c), “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;’;

(b) in clause (1A), in sub-clause (iii),—

(i) in item (a), the words “according to the last preceding census of which the relevant figures have been published before the first day of the previous year” shall be omitted;

(ii) for item (b), the following shall be substituted, namely:—

“(b) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation.—For the purposes of this sub-clause, “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;’.

Substitution of
reference of
certain
expression by
other
expression.

Amendment
of section 10.

4. In the Income-tax Act, for the expression "the Foreign Exchange Regulation Act, 1973", wherever it occurs, the expression "the Foreign Exchange Management Act, 1999" shall be substituted.

46 of 1973.
42 of 1999.

5. In section 10 of the Income-tax Act,—

(I) in clause (10D), with effect from the 1st day of April, 2014,—

(i) in sub-clause (d), after the second proviso, the following proviso shall be inserted, namely:—

'Provided also that where the policy, issued on or after the 1st day of April, 2013, is for insurance on life of any person, who is—

(i) a person with disability or a person with severe disability as referred to in section 80U; or

(ii) suffering from disease or ailment as specified in the rules made under section 80DDB,

the provisions of this sub-clause shall have effect as if for the words "ten per cent.", the words "fifteen per cent." had been substituted.;

(ii) in *Explanation* 1, after the words "business of the first-mentioned person" occurring at the end, the words "and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration" shall be inserted;

(II) after clause (23D), the following clause shall be inserted with effect from the 1st day of April, 2014, namely:—

'(23DA) any income of a securitisation trust from the activity of securitisation.

Explanation.—For the purposes of this clause,—

(a) "securitisation" shall have the same meaning as assigned to it,—

(i) in clause (r) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 and the Securities Contracts (Regulation) Act, 1956; or

15 of 1992.
42 of 1956.

(ii) under the guidelines on securitisation of standard assets issued by the Reserve Bank of India;

(b) "securitisation trust" shall have the meaning assigned to it in the *Explanation* below section 115TC;;

(III) after clause (23EC), the following clause shall be inserted with effect from the 1st day of April, 2014, namely:—

'(23ED) any income, by way of contributions received from a depository, of such Investor Protection Fund set up in accordance with the regulations by a depository as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with a depository, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall, accordingly, be chargeable to income-tax.

Explanation.—For the purposes of this clause,—

22 of 1996. (i) “depository” shall have the same meaning as assigned to it in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996;

15 of 1992. (ii) “regulations” means the regulations made under the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996;”;
22 of 1996.

(IV) in clause (23FB), for *Explanation 1*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purposes of this clause,—

(a) “venture capital company” means a company which—

15 of 1992. (A) has been granted a certificate of registration, before the 21st day of May, 2012, as a Venture Capital Fund and is regulated under the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 (hereinafter referred to as the Venture Capital Funds Regulations) made under the Securities and Exchange Board of India Act, 1992; or

(B) has been granted a certificate of registration as Venture Capital Fund as a sub-category of Category I Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (hereinafter referred to as the Alternative Investment Funds Regulations) made under the Securities and Exchange Board of India Act, 1992, and which fulfils the following conditions, namely:—
15 of 1992.

(i) it is not listed on a recognised stock exchange;

(ii) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking; and

(iii) it has not invested in any venture capital undertaking in which its director or a substantial shareholder (being a beneficial owner of equity shares exceeding ten per cent. of its equity share capital) holds, either individually or collectively, equity shares in excess of fifteen per cent. of the paid-up equity share capital of such venture capital undertaking;

(b) “venture capital fund” means a fund—

16 of 1908. (A) operating under a trust deed registered under the provisions of the Registration Act, 1908, which—

(I) has been granted a certificate of registration, before the 21st day of May, 2012, as a Venture Capital Fund and is regulated under the Venture Capital Funds Regulations; or

(II) has been granted a certificate of registration as Venture Capital Fund as a sub-category of Category I Alternative Investment Fund under the Alternative Investment Funds Regulations and which fulfils the following conditions, namely:—

(i) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking;

(ii) it has not invested in any venture capital undertaking in which its trustee or the settler holds, either individually or collectively, equity shares in excess of fifteen per cent. of the paid-up equity share capital of such venture capital undertaking; and

(iii) the units, if any, issued by it are not listed in any recognised stock exchange; or

(B) operating as a venture capital scheme made by the Unit Trust of India established under the Unit Trust of India Act, 1963; 52 of 1963.

(c) "venture capital undertaking" means—

(i) a venture capital undertaking as defined in clause (n) of regulation 2 of the Venture Capital Funds Regulations; or

(ii) a venture capital undertaking as defined in clause (aa) of sub-regulation (1) of regulation 2 of the Alternative Investment Funds Regulations;";

(V) after clause (34), the following clause shall be inserted with effect from the 1st day of April, 2014, namely:—

"(34A) any income arising to an assessee, being a shareholder, on account of buy back of shares (not being listed on a recognised stock exchange) by the company as referred to in section 115QA;"

(VI) after clause (35), the following clause shall be inserted with effect from the 1st day of April, 2014, namely:—

"(35A) any income by way of distributed income referred to in section 115TA received from a securitisation trust by any person being an investor of the said trust.

Explanation.—For the purposes of this clause, the expressions "investor" and "securitisation trust" shall have the meanings respectively assigned to them in the *Explanation* below section 115TC;"

(VII) in clause (48), for the words "sale of crude oil to any person", the words "sale of crude oil, any other goods or rendering of services, as may be notified by the Central Government in this behalf, to any person" shall be substituted with effect from the 1st day of April, 2014;

(VIII) after clause (48), the following clause shall be inserted, namely:—

"(49) any income of the National Financial Holdings Company Limited, being a company set up by the Central Government, of any previous year relevant to any assessment year commencing on or before the 1st day of April, 2014."

6. After section 32AB of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2014, namely:—

Insertion of
new section
32AC

Investment in
new plant or
machinery.

"32AC. (1) Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new asset after the 31st day of March, 2013 but before the 1st day of April, 2015 and the aggregate amount of actual cost of such new assets exceeds one hundred crore rupees, then, there shall be allowed a deduction,—

(a) for the assessment year commencing on the 1st day of April, 2014, of a sum equal to fifteen per cent. of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2014, if the aggregate amount of actual cost of such new assets exceeds one hundred crore rupees; and

(b) for the assessment year commencing on the 1st day of April, 2015, of a sum equal to fifteen per cent. of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2015, as reduced by the amount of deduction allowed, if any, under clause (a).

(2) If any new asset acquired and installed by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger, within a period of five years from the date of its installation, the amount of deduction allowed under sub-section (1) in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

(3) Where the new asset is sold or otherwise transferred in connection with the amalgamation or demerger within a period of five years from the date of its installation, the provisions of sub-section (2) shall apply to the amalgamated company or the resulting company, as the case may be, as they would have applied to the amalgamating company or the demerged company.

(4) For the purposes of this section, "new asset" means any new plant or machinery (other than ship or aircraft) but does not include—

(i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

(ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(iii) any office appliances including computers or computer software;

(iv) any vehicle; or

(v) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

7. In section 36 of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2014,—

Amendment of
section 36.

(a) in clause (vii), the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation 2.*—For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub-section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (viiia) and such account shall relate to all types of advances, including advances made by rural branches;"

(b) after clause (xv), the following clause shall be inserted, namely:—

'(xvi) an amount equal to the commodities transaction tax paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".'

Explanation.—For the purposes of this clause, the expressions "commodities transaction tax" and "taxable commodities transaction" shall have the meanings respectively assigned to them under Chapter VII of the Finance Act, 2013.'

Amendment of
section 40.

8. In section 40 of the Income-tax Act, in clause (a), after sub-clause (iia), the following sub-clause shall be inserted with effect from the 1st day of April, 2014, namely:—

“(iib) any amount—

(A) paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on; or

(B) which is appropriated, directly or indirectly, from,
a State Government undertaking by the State Government.

Explanation.—For the purposes of this sub-clause, a State Government undertaking includes—

(i) a corporation established by or under any Act of the State Government;

(ii) a company in which more than fifty per cent. of the paid-up equity share capital is held by the State Government;

(iii) a company in which more than fifty per cent. of the paid-up equity share capital is held by the entity referred to in clause (i) or clause (ii) (whether singly or taken together);

(iv) a company or corporation in which the State Government has the right to appoint the majority of the directors or to control the management or policy decisions, directly or indirectly, including by virtue of its shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(v) an authority, a board or an institution or a body established or constituted by or under any Act of the State Government or owned or controlled by the State Government;”.

Amendment of
section 43.

9. In section 43 of the Income-tax Act, in clause (5), with effect from the 1st day of April, 2014,—

(I) in the proviso,—

(A) in clause (d), after the words “a recognised stock exchange;”, the word “or” shall be inserted;

(B) after clause (d), the following clause shall be inserted, namely:—

“(e) an eligible transaction in respect of trading in commodity derivatives carried out in a recognised association;”;

(II) the *Explanation* shall be numbered as “*Explanation 1*” thereof and in the *Explanation 1* as so numbered, for the words “this clause”, the word, brackets and letter “clause (d)” shall be substituted;

(III) after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

‘*Explanation 2.*—For the purposes of clause (e), the expressions—

(i) “commodity derivative” shall have the meaning as assigned to it in Chapter VII of the Finance Act, 2013;

(ii) “eligible transaction” means any transaction,—

(A) carried out electronically on screen-based systems through member or an intermediary, registered under the bye-laws, rules and regulations of the recognised association for trading in commodity derivative in accordance with the provisions of the Forward Contracts (Regulation) Act, 1952 and the rules, regulations or bye-laws made or directions issued under that Act on a recognised association; and

(B) which is supported by a time stamped contract note issued by such member or intermediary to every client indicating in the contract note, the unique client identity number allotted under the Act, rules, regulations or bye-laws referred to in sub-clause (4), unique trade number and permanent account number allotted under this Act;

74 of 1952.

(iii) "recognised association" means a recognised association as referred to in clause (j) of section 2 of the Forward Contracts (Regulation) Act, 1952 and which fulfils such conditions as may be prescribed and is notified by the Central Government for this purpose;".

10. After section 43C of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2014, namely:—

Insertion of new section 43CA.

"43CA. (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset."

11. In section 56 of the Income-tax Act, in sub-section (2),—

Amendment of section 56.

(1) in clause (vii), for sub-clause (b), the following sub-clause shall be substituted with effect from the 1st day of April, 2014, namely:—

"(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;";

(II) in clause (viib), in the *Explanation*, in clause (b), for the word and figure "*Explanation I*", the word "*Explanation*" shall be substituted.

Amendment of section 80C.

12. In section 80C of the Income-tax Act, in sub-section (3A), before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2014, namely:—

‘Provided that where the policy, issued on or after the 1st day of April, 2013, is for insurance on life of any person, who is—

(a) a person with disability or a person with severe disability as referred to in section 80U, or

(b) suffering from disease or ailment as specified in the rules made under section 80DDB,

the provisions of this sub-section shall have effect as if for the words “ten per cent.”, the words “fifteen per cent.” had been substituted.’.

Amendment of section 80CCG.

13. In section 80CCG of the Income-tax Act, with effect from the 1st day of April, 2014,—

(a) in sub-section (1),—

(i) after the words “acquired listed equity shares”, the words “or listed units of an equity oriented fund” shall be inserted;

(ii) after the words “in such equity shares”, the words “or units” shall be inserted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The deduction under sub-section (1) shall be allowed in accordance with, and subject to, the provisions of this section for three consecutive assessment years, beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units of equity oriented fund were first acquired.”;

(c) in sub-section (3),—

(A) in clause (i), for the words “ten lakh rupees”, the words “twelve lakh rupees” shall be substituted;

(B) in clause (iii), after the words “listed equity shares”, the words “or listed units of equity oriented fund” shall be inserted;

(d) after sub-section (4), the following *Explanation* shall be inserted, namely:—

‘*Explanation.*—For the purposes of this section, “equity oriented fund” shall have the meaning assigned to it in the *Explanation* to clause (38) of section 10.’.

Amendment of section 80D.

14. In section 80D of the Income-tax Act, in sub-section (2), in clause (a), after the words “Central Government Health Scheme”, the words “or such other scheme as may be notified by the Central Government in this behalf” shall be inserted with effect from the 1st day of April, 2014.

Insertion of new section 80EE.

15. After section 80E of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2014, namely:—

Deduction in respect of interest on loan taken for residential house property.

‘80EE. (1) In computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.

(2) The deduction under sub-section (1) shall not exceed one lakh rupees and shall be allowed in computing the total income of the individual for the assessment year beginning on the 1st day of April, 2014 and in a case where the interest

payable for the previous year relevant to the said assessment year is less than one lakh rupees, the balance amount shall be allowed in the assessment year beginning on the 1st day of April, 2015.

(3) The deduction under sub-section (1) shall be subject to the following conditions, namely:—

(i) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, 2013 and ending on the 31st day of March, 2014;

(ii) the amount of loan sanctioned for acquisition of the residential house property does not exceed twenty-five lakh rupees;

(iii) the value of the residential house property does not exceed forty lakh rupees;

(iv) the assessee does not own any residential house property on the date of sanction of the loan.

(4) Where a deduction under this section is allowed for any interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Act for the same or any other assessment year.

(5) For the purposes of this section,—

(a) “financial institution” means a banking company to which the Banking Regulation Act, 1949 applies including any bank or banking institution referred to in section 51 of that Act or a housing finance company;

(b) “housing finance company” means a public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.’.

10 of 1949.

16. In section 80G of the Income-tax Act, in sub-section (1), in clause (i), after the words, brackets, figures and letters “or in sub-clause (iiib)”, the words, brackets, figures and letter “or in sub-clause (iiib)” shall be inserted with effect from the 1st day of April, 2014.

Amendment of section 80G.

17. In section 80GGB of the Income-tax Act, before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2014, namely:—

Amendment of section 80GGB.

“Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash.”.

18. In section 80GGC of the Income-tax Act, before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2014, namely:—

Amendment of section 80GGC.

“Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash.”.

19. In section 80-IA of the Income-tax Act, in sub-section (4), in clause (iv), for the words, figures and letters “the 31st day of March, 2013”, wherever they occur, the words, figures and letters “the 31st day of March, 2014” shall respectively be substituted with effect from the 1st day of April, 2014.

Amendment of section 80-IA.

20. In section 80JJAA of the Income-tax Act, with effect from the 1st day of April, 2014,—

Amendment of section 80JJAA.

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where the gross total income of an assessee, being an Indian company, includes any profits and gains derived from the manufacture of goods

in a factory, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent. of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.”;

(ii) in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

“(a) if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company;”;

(iii) in the *Explanation*,—

(a) in clause (i), in the proviso, for the word “undertaking” at both the places where it occurs, the word “factory” shall be substituted;

(b) after clause (iii), the following clause shall be inserted, namely:—

“(iv) “factory” shall have the same meaning as assigned to it in clause (m) of section 2 of the Factories Act, 1948.”

63 of 1948.

Amendment of section 87.

21. In section 87 of the Income-tax Act, with effect from the 1st day of April, 2014,—

(i) in sub-section (1), for the word and figures “sections 88”, the word, figures and letter “sections 87A, 88” shall be substituted;

(ii) in sub-section (2), for the word and figures “section 88”, the words, figures and letter “section 87A or section 88” shall be substituted.

Insertion of new section 87A.

22. After section 87 of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2014, namely:—

Rebate of income-tax in case of certain individuals.

“87A. An assessee, being an individual resident in India, whose total income does not exceed five hundred thousand rupees, shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to hundred per cent. of such income-tax or an amount of two thousand rupees, whichever is less.”.

Amendment of section 90.

23. In section 90 of the Income-tax Act,—

(a) sub-section (2A) shall be omitted;

(b) after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2016, namely:—

“(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee even if such provisions are not beneficial to him.”;

(c) in sub-section (4), for the words “a certificate, containing such particulars as may be prescribed, of his being a resident”, the words “a certificate of his being a resident” shall be substituted;

(d) after sub-section (4) and before *Explanation 1*, the following sub-section shall be inserted, namely:—

“(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed.”.

Amendment of section 90A.

24. In section 90A of the Income-tax Act,—

(a) sub-section (2A) shall be omitted;

(b) after sub-section (2), the following sub-section shall be inserted with effect

from the 1st day of April, 2016, namely:—

“(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee even if such provisions are not beneficial to him.”;

(c) in sub-section (4), for the words “a certificate, containing such particulars as may be prescribed, of his being a resident”, the words “a certificate of his being a resident” shall be substituted;

(d) after sub-section (4) and before *Explanation 1*, the following sub-section shall be inserted, namely:—

“(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed.”.

23 of 2012. 25. Chapter X-A of the Income-tax Act (as inserted by section 41 of the Finance Act, 2012) relating to General Anti-Avoidance Rule shall be omitted with effect from the 1st day of April, 2014.

Omission of Chapter X-A relating to General Anti-Avoidance Rule.

26. After Chapter X of the Income-tax Act, the following Chapter shall be inserted with effect from the 1st day of April, 2016, namely:—

Insertion of new Chapter X-A.

‘CHAPTER X-A

GENERAL ANTI-AVOIDANCE RULE

95. Notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement and the consequence in relation to tax arising therefrom may be determined subject to the provisions of this Chapter.

Applicability of General Anti-Avoidance Rule.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of this Chapter may be applied to any step in, or a part of, the arrangement as they are applicable to the arrangement.

96. (1) An impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and it—

Impermissible avoidance arrangement.

(a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;

(b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;

(c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or

(d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for *bona fide* purposes.

(2) An arrangement shall be presumed, unless it is proved to the contrary by the assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

97. (1) An arrangement shall be deemed to lack commercial substance, if—

Arrangement to lack commercial substance.

(a) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or

(b) it involves or includes—

- (i) round trip financing;
- (ii) an accommodating party;
- (iii) elements that have effect of offsetting or cancelling each other;

or

(iv) a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction; or

(c) it involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit (but for the provisions of this Chapter) for a party; or

(d) it does not have a significant effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained (but for the provisions of this Chapter).

(2) For the purposes of sub-section (1), round trip financing includes any arrangement in which, through a series of transactions—

(a) funds are transferred among the parties to the arrangement; and

(b) such transactions do not have any substantial commercial purpose other than obtaining the tax benefit (but for the provisions of this Chapter),

without having any regard to—

(A) whether or not the funds involved in the round trip financing can be traced to any funds transferred to, or received by, any party in connection with the arrangement;

(B) the time, or sequence, in which the funds involved in the round trip financing are transferred or received; or

(C) the means by, or manner in, or mode through, which funds involved in the round trip financing are transferred or received.

(3) For the purposes of this Chapter, a party to an arrangement shall be an accommodating party, if the main purpose of the direct or indirect participation of that party in the arrangement, in whole or in part, is to obtain, directly or indirectly, a tax benefit (but for the provisions of this Chapter) for the assessee whether or not the party is a connected person in relation to any party to the arrangement.

(4) For the removal of doubts, it is hereby clarified that the following may be relevant but shall not be sufficient for determining whether an arrangement lacks commercial substance or not, namely:—

(i) the period or time for which the arrangement (including operations therein) exists;

(ii) the fact of payment of taxes, directly or indirectly, under the arrangement;

(iii) the fact that an exit-route (including transfer of any activity or business or operations) is provided by the arrangement.

98. (1) If an arrangement is declared to be an impermissible avoidance arrangement, then, the consequences, in relation to tax, of the arrangement, including denial of tax benefit or a benefit under a tax treaty, shall be determined, in such manner as is deemed appropriate, in the circumstances of the case, including by way of but not limited to the following, namely:—

Consequences
of
impermissible
avoidance
arrangement.

(a) disregarding, combining or recharacterising any step in, or a part or whole of, the impermissible avoidance arrangement;

(b) treating the impermissible avoidance arrangement as if it had not been entered into or carried out;

(c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;

(d) deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;

(e) reallocating amongst the parties to the arrangement—

(i) any accrual, or receipt, of a capital nature or revenue nature; or

(ii) any expenditure, deduction, relief or rebate;

(f) treating—

(i) the place of residence of any party to the arrangement; or

(ii) the situs of an asset or of a transaction,

at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or

(g) considering or looking through any arrangement by disregarding any corporate structure.

(2) For the purposes of sub-section (1),—

(i) any equity may be treated as debt or *vice versa*;

(ii) any accrual, or receipt, of a capital nature may be treated as of revenue nature or *vice versa*; or

(iii) any expenditure, deduction, relief or rebate may be recharacterised.

99. For the purposes of this Chapter, in determining whether a tax benefit exists,—

(i) the parties who are connected persons in relation to each other may be treated as one and the same person;

(ii) any accommodating party may be disregarded;

(iii) the accommodating party and any other party may be treated as one and the same person;

(iv) the arrangement may be considered or looked through by disregarding any corporate structure.

100. The provisions of this Chapter shall apply in addition to, or in lieu of, any other basis for determination of tax liability.

101. The provisions of this Chapter shall be applied in accordance with such guidelines and subject to such conditions, as may be prescribed.

102. In this Chapter, unless the context otherwise requires,—

(1) “arrangement” means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding;

(2) “asset” includes property, or right, of any kind;

Treatment of connected person and accommodating party.

Application of this Chapter.

Framing of guidelines.

Definitions.

(3) "benefit" includes a payment of any kind whether in tangible or intangible form;

(4) "connected person" means any person who is connected directly or indirectly to another person and includes,—

(a) any relative of the person, if such person is an individual;

(b) any director of the company or any relative of such director, if the person is a company;

(c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member, if the person is a firm or association of persons or body of individuals;

(d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;

(e) any individual who has a substantial interest in the business of the person or any relative of such individual;

(f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member;

(g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member has a substantial interest in the business of the person, or family or any relative of such director, partner or member;

(h) any other person who carries on a business, if—

(i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or

(ii) the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person;

(5) "fund" includes—

(a) any cash;

(b) cash equivalents; and

(c) any right, or obligation, to receive or pay, the cash or cash equivalent;

(6) "party" includes a person or a permanent establishment which participates or takes part in an arrangement;

(7) "relative" shall have the meaning assigned to it in the *Explanation* to clause (vi) of sub-section (2) of section 56;

(8) a person shall be deemed to have a substantial interest in the business, if,—

(a) in a case where the business is carried on by a company, such person is, at any time during the financial year, the beneficial owner of equity shares carrying twenty per cent. or more, of the voting power; or

(b) in any other case, such person is, at any time during the financial

year, beneficially entitled to twenty per cent. or more, of the profits of such business;

(9) "step" includes a measure or an action, particularly one of a series taken in order to deal with or achieve a particular thing or object in the arrangement;

(10) "tax benefit" includes,—

(a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or

(b) an increase in a refund of tax or other amount under this Act; or

(c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or

(d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or

(e) a reduction in total income; or

(f) an increase in loss,

in the relevant previous year or any other previous year;

(11) "tax treaty" means an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A.

27. In section 115A of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2014,—

Amendment of section 115A.

(1) in clause (a),—

(A) after sub-clause (iiaa), the following sub-clause shall be inserted, namely:—

“(iiab) interest of the nature and extent referred to in section 194LD; or”;

(B) in item (BA), after the words, brackets, figures and letters “sub-clause (iiaa)”, the words, brackets, figures and letters “or sub-clause (iiab)” shall be inserted;

(C) in item (D), for the words, brackets, figures and letters “sub-clause (iiaa)”, the words, brackets, figures and letters “sub-clause (iiaa), sub-clause (iiab)” shall be substituted;

(II) in clause (b), for sub-clauses (A), (AA), (B) and (BB), the following sub-clauses shall be substituted, namely:—

“(A) the amount of income-tax calculated on the income by way of royalty, if any, included in the total income, at the rate of twenty-five per cent.;

(B) the amount of income-tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of twenty-five per cent.; and”.

28. In section 115AD of the Income-tax Act, in sub-section (1), in item (i), the following proviso shall be inserted with effect from the 1st day of April, 2014, namely:—

Amendment of section 115AD.

“Provided that the amount of income-tax calculated on the income by way of interest referred to in section 194LD shall be at the rate of five per cent.;”.

Amendment
of section
115BBD.

29. In section 115BBD of the Income-tax Act, in sub-section (1), after the words, figures and letters "the 1st day of April, 2013", the words, figures and letters "or beginning on the 1st day of April, 2014" shall be inserted with effect from the 1st day of April, 2014.

Amendment
of section
115-O.

30. In section 115-O of the Income-tax Act, in sub-section (1A), for clause (i), the following clause shall be substituted with effect from the 1st day of June, 2013, namely:—

"(i) the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary and,—

(a) where such subsidiary is a domestic company, the subsidiary has paid the tax which is payable under this section on such dividend; or

(b) where such subsidiary is a foreign company, the tax is payable by the domestic company under section 115BBD on such dividend:

Provided that the same amount of dividend shall not be taken into account for reduction more than once;".

Insertion of
new Chapter
XII-DA.

31. After Chapter XII-D of the Income-tax Act, the following Chapter shall be inserted with effect from the 1st day of June, 2013, namely:—

'CHAPTER XII-DA

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME OF DOMESTIC COMPANY FOR BUY-BACK OF SHARES

Tax on
distributed
income to
shareholders.

115QA. (1) Notwithstanding anything contained in any other provision of this Act, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount of distributed income by the company on buy-back of shares (not being shares listed on a recognised stock exchange) from a shareholder shall be charged to tax and such company shall be liable to pay additional income-tax at the rate of twenty per cent. on the distributed income.

Explanation.—For the purposes of this section,—

(i) "buy-back" means purchase by a company of its own shares in accordance with the provisions of section 77A of the Companies Act, 1956; 1 of 1956.

(ii) "distributed income" means the consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares.

(2) Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on the distributed income under sub-section (1) shall be payable by such company.

(3) The principal officer of the domestic company and the company shall be liable to pay the tax to the credit of the Central Government within fourteen days from the date of payment of any consideration to the shareholder on buy-back of shares referred to in sub-section (1).

(4) The tax on the distributed income by the company shall be treated as the final payment of tax in respect of the said income and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid.

(5) No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the income which has been charged to tax under sub-section (1) or the tax thereon.

115QB. Where the principal officer of the domestic company and the company fails to pay the whole or any part of the tax on the distributed income referred to in sub-section (1) of section 115QA, within the time allowed under sub-section (3) of that section, he or it shall be liable to pay simple interest at the rate of one per cent. for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

Interest payable for non-payment of tax by company.

115QC. If any principal officer of a domestic company and the company does not pay tax on distributed income in accordance with the provisions of section 115QA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

When company is deemed to be assessee in default.

32. In section 115R of the Income-tax Act, in sub-section (2), with effect from the 1st day of June, 2013,—

Amendment of section 115R.

(a) in clause (ii), for the words “twelve and one-half per cent.”, the words “twenty-five per cent.” shall be substituted;

(b) after sub-clause (iii) and before the proviso, the following proviso shall be inserted, namely:—

“Provided that where any income is distributed by a Mutual Fund under an infrastructure debt fund scheme to a non-resident (not being a company) or a foreign company, the Mutual Fund shall be liable to pay additional income-tax at the rate of five per cent. on income so distributed.”;

(c) in the proviso, for the words “Provided that”, the words “Provided further that” shall be substituted;

(d) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purposes of this sub-section,—

(i) “administrator” and “specified company” shall have the meanings respectively assigned to them in the *Explanation* to clause (35) of section 10;

(ii) “infrastructure debt fund scheme” shall have the same meaning as assigned to it in clause (1) of regulation 49L of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992.

15 of 1992.

33. After Chapter XII-E of the Income-tax Act, the following Chapter shall be inserted with effect from the 1st day of June, 2013, namely:—

Insertion of new Chapter XII-EA.

‘CHAPTER XII-EA

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME BY SECURITISATION TRUSTS

115TA. (1) Notwithstanding anything contained in any other provisions of the Act, any amount of income distributed by the securitisation trust to its investors shall be chargeable to tax and such securitisation trust shall be liable to pay additional income-tax on such distributed income at the rate of—

Tax on distributed income to investors.

(i) twenty-five per cent. on income distributed to any person being an individual or a Hindu undivided family;

(ii) thirty per cent. on income distributed to any other person:

Provided that nothing contained in this sub-section shall apply in respect of any income distributed by the securitisation trust to any person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act.

(2) The person responsible for making payment of the income distributed by the securitisation trust shall be liable to pay tax to the credit of the Central Government within fourteen days from the date of distribution or payment of such income, whichever is earlier.

(3) The person responsible for making payment of the income distributed by the securitisation trust shall, on or before the 15th day of September in each year, furnish to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving the details of the amount of income distributed to investors during the previous year, the tax paid thereon and such other relevant details, as may be prescribed.

(4) No deduction under any other provisions of this Act shall be allowed to the securitisation trust in respect of the income which has been charged to tax under sub-section (1).

Interest payable for non-payment of tax.

115TB. Where the person responsible for making payment of the income distributed by the securitisation trust and the securitisation trust fails to pay the whole or any part of the tax referred to in sub-section (1) of section 115TA, within the time allowed under sub-section (2) of that section, he or it shall be liable to pay simple interest at the rate of one per cent. every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

Securitisation trust to be assessee in default.

115TC. If any person responsible for making payment of the income distributed by the securitisation trust and the securitisation trust does not pay tax, as referred to in sub-section (1) of section 115TA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

Explanation.—For the purposes of this Chapter,—

(a) “investor” means a person who is holder of any securitised debt instrument or securities issued by the securitisation trust;

(b) “securities” means debt securities issued by a Special Purpose Vehicle as referred to in the guidelines on securitisation of standard assets issued by the Reserve Bank of India;

(c) “securitised debt instrument” shall have the same meaning as assigned to it in clause (s) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 and the Securities Contracts (Regulation) Act, 1956;

15 of 1992.
42 of 1956.

(d) “securitisation trust” means a trust, being a—

(i) “special purpose distinct entity” as defined in clause (u) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 and the Securities Contracts (Regulation) Act, 1956, and regulated under the said regulations; or

15 of 1992.
42 of 1956.

(ii) "Special Purpose Vehicle" as defined in, and regulated by, the guidelines on securitisation of standard assets issued by the Reserve Bank of India,

which fulfils such conditions, as may be prescribed.'

34. In section 132B of the Income-tax Act, the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted with effect from the 1st day of June, 2013, namely:—

Amendment
of section
132B.

'*Explanation 2.*—For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII.'

35. In section 138 of the Income-tax Act, in sub-section (1), in clause (a), in sub-clause (i), for the words, figures, brackets and letter "section 2(d) of the Foreign Exchange Regulation Act, 1947", the words, brackets, letter and figures "clause (n) of section 2 of the Foreign Exchange Management Act, 1999" shall be substituted.

7 of 1947.

42 of 1999.

Amendment
of section
138.

36. In section 139 of the Income-tax Act, in sub-section (9), in the *Explanation*, after clause (a), the following clause shall be inserted with effect from the 1st day of June, 2013, namely:—

Amendment
of section
139.

"(aa) the tax together with interest, if any, payable in accordance with the provisions of section 140A, has been paid on or before the date of furnishing of the return;"

37. In section 142 of the Income-tax Act, in sub-section (2A), for the words "the nature and complexity of the accounts of the assessee and", the words "the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and" shall be substituted with effect from the 1st day of June, 2013.

Amendment
of section 142.

38. Section 144BA of the Income-tax Act (as inserted by section 62 of the Finance Act, 2012) shall be omitted with effect from the 1st day of April, 2014.

23 of 2012.

Omission of
section
144BA.

39. After section 144B of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2016, namely:—

Insertion of
new section
144BA.

"144BA. (1) If, the Assessing Officer, at any stage of the assessment or reassessment proceedings before him having regard to the material and evidence available, considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement and to determine the consequence of such an arrangement within the meaning of Chapter X-A, then, he may make a reference to the Commissioner in this regard.

Reference to
Commissioner
in certain
cases.

(2) The Commissioner shall, on receipt of a reference under sub-section (1), if he is of the opinion that the provisions of Chapter X-A are required to be invoked, issue a notice to the assessee, setting out the reasons and basis of such opinion, for submitting objections, if any, and providing an opportunity of being heard to the assessee within such period, not exceeding sixty days, as may be specified in the notice.

(3) If the assessee does not furnish any objection to the notice within the time specified in the notice issued under sub-section (2), the Commissioner shall issue such directions as he deems fit in respect of declaration of the arrangement to be an impermissible avoidance arrangement.

(4) In case the assessee objects to the proposed action, and the Commissioner after hearing the assessee in the matter is not satisfied by the explanation of the assessee, then, he shall make a reference in the matter to the Approving Panel for the purpose of declaration of the arrangement as an impermissible avoidance arrangement.

(5) If the Commissioner is satisfied, after having heard the assessee that the provisions of Chapter X-A are not to be invoked, he shall by an order in writing, communicate the same to the Assessing Officer with a copy to the assessee.

(6) The Approving Panel, on receipt of a reference from the Commissioner under sub-section (4), shall issue such directions, as it deems fit, in respect of the declaration of the arrangement as an impermissible avoidance arrangement in accordance with the provisions of Chapter X-A including specifying of the previous year or years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.

(7) No direction under sub-section (6) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interests of the revenue, as the case may be.

(8) The Approving Panel may, before issuing any direction under sub-section (6),—

(i) if it is of the opinion that any further inquiry in the matter is necessary, direct the Commissioner to make such inquiry or cause the inquiry to be made by any other income-tax authority and furnish a report containing the result of such inquiry to it; or

(ii) call for and examine such records relating to the matter as it deems fit; or

(iii) require the assessee to furnish such documents and evidence as it may direct.

(9) If the members of the Approving Panel differ in opinion on any point, such point shall be decided according to the opinion of the majority of the members.

(10) The Assessing Officer, on receipt of directions of the Commissioner under sub-section (3) or of the Approving Panel under sub-section (6), shall proceed to complete the proceedings referred to in sub-section (1) in accordance with such directions and the provisions of Chapter X-A.

(11) If any direction issued under sub-section (6) specifies that declaration of the arrangement as impermissible avoidance arrangement is applicable for any previous year other than the previous year to which the proceeding referred to in sub-section (1) pertains, then, the Assessing Officer while completing any assessment or reassessment proceedings of the assessment year relevant to such other previous year shall do so in accordance with such directions and the provisions of Chapter X-A and it shall not be necessary for him to seek fresh direction on the issue for the relevant assessment year.

(12) No order of assessment or reassessment shall be passed by the Assessing Officer without the prior approval of the Commissioner, if any tax consequences have been determined in the order under the provisions of Chapter X-A.

(13) The Approving Panel shall issue directions under sub-section (6) within a period of six months from the end of the month in which the reference under sub-section (4) was received.

(14) The directions issued by the Approving Panel under sub-section (6) shall be binding on—

(i) the assessee; and

(ii) the Commissioner and the income-tax authorities subordinate to him,

and notwithstanding anything contained in any other provision of the Act, no appeal under the Act shall lie against such directions.

(15) The Central Government shall, for the purposes of this section, constitute one or more Approving Panels as may be necessary and each panel shall consist of three members including a Chairperson.

(16) The Chairperson of the Approving Panel shall be a person who is or has been a judge of a High Court, and—

(i) one member shall be a member of Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and

(ii) one member shall be an academic or scholar having special knowledge of matters, such as direct taxes, business accounts and international trade practices.

(17) The term of the Approving Panel shall ordinarily be for one year and may be extended from time to time up to a period of three years.

(18) The Chairperson and members of the Approving Panel shall meet, as and when required, to consider the references made to the panel and shall be paid such remuneration as may be prescribed.

(19) In addition to the powers conferred on the Approving Panel under this section, it shall have the powers which are vested in the Authority for Advance Rulings under section 245U.

(20) The Board shall provide to the Approving Panel such officials as may be necessary for the efficient exercise of powers and discharge of functions of the Approving Panel under the Act.

(21) The Board may make rules for the purposes of the constitution and efficient functioning of the Approving Panel and expeditious disposal of the references received under sub-section (4).

Explanation.—In computing the period referred to in sub-section (13), the following shall be excluded—

(i) the period commencing from the date on which the first direction is issued by the Approving Panel to the Commissioner for getting the inquiries conducted through the authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is last received by the Approving Panel or one year, whichever is less;

(ii) the period during which the proceeding of the Approving Panel is stayed by an order or injunction of any court:

Provided that where immediately after the exclusion of the aforesaid time or period, the period available to the Approving Panel for issue of directions is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of six months shall be deemed to have been extended accordingly.”

40. In section 144C of the Income-tax Act,—

(a) sub-section (14A) shall be omitted;

(b) after sub-section (14), the following sub-section shall be inserted with effect from the 1st day of April, 2016, namely:—

“(14A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Commissioner as provided in sub-section (12) of section 144BA.”

Amendment
of section
144C.

Amendment
of section 153

41. In section 153 of the Income-tax Act,—

(I) in sub-section (1), for the third proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2012, namely:—

'Provided also that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st day of April, 2009 or any subsequent assessment year and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA is made, the provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words "two years", the words "three years" had been substituted.;

(II) in sub-section (2), for the fourth proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2012, namely:—

'Provided also that where the notice under section 148 was served on or after the 1st day of April, 2010 and during the course of the proceeding for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA is made, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "two years" had been substituted.;

(III) in sub-section (2A), for the fourth proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2012, namely:—

'Provided also that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2010, and during the course of the proceeding for the fresh assessment of total income, a reference under sub-section (1) of section 92CA is made, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "two years" had been substituted.;

(IV) in *Explanation 1*,—

(a) for clause (iii), the following clause shall be substituted with effect from the 1st day of June, 2013, namely:—

"(iii) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and—

(a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or

(b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner, or";

(b) for clause (viii), the following clause shall be substituted with effect from the 1st day of June, 2013, namely:—

"(viii) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less,;"

(c) clause (ix) shall be omitted;

(d) in clause (viii), at the end, the word "or" and after clause (viii), the following clause shall be inserted with effect from the 1st day of April, 2016, namely:—

"(ix) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer,".

42. In section 153B of the Income-tax Act, in sub-section (1),—

Amendment
of section
153B.

(a) for the fourth proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2012, namely:—

'Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2009 or any subsequent financial year and during the course of the proceeding for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA is made, the provisions of clause (a) or clause (b) of this sub-section, shall, notwithstanding anything contained in clause (i) of the second proviso, have effect as if for the words "two years", the words "three years" had been substituted:';

(b) for the sixth proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2012, namely:—

'Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2009 or any subsequent financial year and during the course of the proceeding for the assessment or reassessment of total income, in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA is made, the period of limitation for making the assessment or reassessment in case of such other person shall, notwithstanding anything contained in clause (ii) of the second proviso, be the period of thirty-six months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twenty-four months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:';

(c) in the *Explanation*,—

(a) for clause (ii), the following clause shall be substituted with effect from the 1st day of June, 2013, namely:—

"(ii) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and—

(a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or

(b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner, or";

(b) for clause (viii), the following clause shall be substituted with effect from the 1st day of June, 2013, namely:—

“(viii) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less,”;

(c) clause (ix) shall be omitted;

(d) in clause (viii), at the end, the word “or” and after clause (viii), the following clause shall be inserted with effect from the 1st day of April, 2016, namely:—

“(ix) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer,”.

Amendment
of section
153D.

43. In section 153D of the Income-tax Act, the following proviso shall be inserted with effect from the 1st day of April, 2016, namely:—

“Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the Commissioner under sub-section (12) of section 144BA.”.

Amendment
of section
167C.

44. In section 167C of the Income-tax Act, the following *Explanation* shall be inserted with effect from the 1st day of June, 2013, namely:—

‘*Explanation.*—For the purposes of this section, the expression “tax due” includes penalty, interest or any other sum payable under the Act.’.

Amendment
of section 179.

45. In section 179 of the Income-tax Act, after sub-section (2), the following *Explanation* shall be inserted with effect from the 1st day of June, 2013, namely:—

‘*Explanation.*—For the purposes of this section, the expression “tax due” includes penalty, interest or any other sum payable under the Act.’.

Insertion of
new section
194-IA.

46. After section 194-I of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2013, namely:—

Payment on
transfer of
certain
immovable
property other
than
agricultural
land.

‘194-IA. (1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent. of such sum as income-tax thereon.

(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

(3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Explanation.— For the purposes of this section,—

(a) “agricultural land” means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(b) "immovable property" means any land (other than agricultural land) or any building or part of a building.'.

47. After section 194LC of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2013, namely:—

Insertion of new section 194LD.

'194LD. (1) Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor, any income by way of interest referred to in sub-section (2), shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.

Income by way of interest on certain bonds and Government securities.

(2) The income by way of interest referred to in sub-section (1) shall be the interest payable on or after the 1st day of June, 2013 but before the 1st day of June, 2015 in respect of investment made by the payee in—

(i) a rupee denominated bond of an Indian company; or

(ii) a Government security:

Provided that the rate of interest in respect of bond referred to in clause (i) shall not exceed the rate as may be notified by the Central Government in this behalf.

Explanation.—For the purpose of this section,—

(a) "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the *Explanation* to section 115AD;

42 of 1956.

(b) "Government security" shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956;

15 of 1992.

(c) "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992.'

48. In section 195 of the Income-tax Act, in sub-section (1), after the word, figures and letters "section 194LC", the words, figures and letters "or section 194LD" shall be inserted with effect from the 1st day of June, 2013.

Amendment of section 195.

49. In section 196D of the Income-tax Act, in sub-section (1), for the words, brackets, letters and figures "any income in respect of securities referred to in clause (a) of sub-section (1) of section 115AD is payable", the words, brackets, letters and figures "any income in respect of securities referred to in clause (a) of sub-section (1) of section 115AD, not being income by way of interest referred to in section 194LD, is payable" shall be substituted with effect from the 1st day of June, 2013.

Amendment of section 196D.

50. In section 204,—

(A) in clause (iia), for the words "authorised dealer", the words "authorised person" shall be substituted;

Amendment of section 204.

(B) in the *Explanation*, for clause (b), the following clause shall be substituted, namely:—

42 of 1999.

'(b) "authorised person" shall have the meaning assigned to it in clause (c) of section 2 of the Foreign Exchange Management Act, 1999.'

Amendment
of section
206AA.

51. In section 206AA of the Income-tax Act, after sub-section (6), the following sub-section shall be inserted with effect from the 1st day of June, 2013, namely:—

"(7) The provisions of this section shall not apply in respect of payment of interest on long-term infrastructure bonds as referred to in section 194LC, to a non-resident, not being a company, or to a foreign company."

Amendment
of section
206C.

52. In sub-section (1D) of section 206C of the Income-tax Act, the brackets and words "(excluding any coin or any other article weighing ten grams or less)" shall be omitted with effect from the 1st day of June, 2013.

Amendment
of section
245N.

53. In section 245N of the Income-tax Act,—

(i) in clause (a),—

(I) sub-clause (iv) shall be omitted;

(II) after sub-clause (iii), the following sub-clause shall be inserted with effect from the 1st day of April, 2015, namely:—

"(iv) a determination or decision by the Authority whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not;"

(ii) in clause (b),—

(I) sub-clause (iiia) shall be omitted;

(II) in sub-clause (iii), for the word "or" occurring at the end, the word "and" shall be substituted;

(III) in sub-clause (iii), for the word "and" occurring at the end, the word "or" shall be substituted with effect from the 1st day of April, 2015;

(IV) after sub-clause (iii), the following sub-clause shall be inserted with effect from the 1st day of April, 2015, namely:—

"(iiia) is referred to in sub-clause (iv) of clause (a); and".

Amendment
of section
245R.

54. In section 245R of the Income-tax Act, in sub-section (2), in the proviso, in clause (iii),—

(a) the words, brackets, figures and letters "or in the case of an applicant falling in sub-clause (iiia) of clause (b) of section 245N" shall be omitted;

(b) after the words, brackets, letters and figures "clause (b) of section 245N", the words, brackets, figures and letters "or in the case of an applicant falling in sub-clause (iiia) of clause (b) of section 245N" shall be inserted with effect from the 1st day of April, 2015.

Amendment
of section
246A.

55. In section 246A of the Income-tax Act, in sub-section (1),—

(i) in clause (a),—

(I) the words, brackets, figures and letters "or an order referred to in sub-section (12) of section 144BA" shall be omitted;

(II) after the words "Dispute Resolution Panel", the words, brackets, figures and letters "or an order referred to in sub-section (12) of section 144BA" shall be inserted with effect from the 1st day of April, 2016;

(ii) in clause (b),—

(I) the words, brackets, figures and letters "or an order referred to in sub-section (12) of section 144BA" shall be omitted;

(II) after the words "Dispute Resolution Panel", the words, brackets, figures and letters "or an order referred to in sub-section (12) of section 144BA" shall be inserted with effect from the 1st day of April, 2016;

(iii) in clause (ba),—

(I) the words, brackets, figures and letters "or an order referred to in sub-section (12) of section 144BA" shall be omitted;

(II) the words, brackets, figures and letters "or an order referred to in sub-section (12) of section 144BA" shall be inserted at the end with effect from the 1st day of April, 2016;

(iv) in clause (c),—

(I) the words, brackets, figures and letters "except where it is in respect of an order as referred to in sub-section (12) of section 144BA" shall be omitted;

(II) the words, brackets, figures and letters "except an order referred to in sub-section (12) of section 144BA" shall be inserted at the end with effect from the 1st day of April, 2016.

56. In section 252 of the Income-tax Act, for sub-section (3), the following sub-section shall be substituted with effect from the 1st day of June, 2013, namely:—

Amendment
of section
252.

"(3) The Central Government shall appoint—

(a) a person who is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court; or

(b) the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal,

to be the President thereof."

57. In section 253 of the Income-tax Act, in sub-section (1),—

Amendment
of section
253.

(a) clause (e) shall be omitted;

(b) after clause (d), the following clause shall be inserted with effect from the 1st day of April, 2016, namely:—

"(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Commissioner as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order."

58. For section 271FA of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2014, namely:—

Substitution
of new section
for section
271FA.

"271FA. If a person who is required to furnish an annual information return under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under sub-section (2) thereof, the income-tax authority prescribed under said sub-section (1) may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which such failure continues:

Penalty for
failure to
furnish
annual
information
return.

Provided that where such person fails to furnish the return within the period specified in the notice issued under sub-section (5) of section 285BA, he shall pay, by way of penalty, a sum of five hundred rupees for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the return expires."

59. In section 295 of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 2016,—

Amendment
of section 295.

(i) clause (ee) shall be renumbered as clause (e) and after clause (e) as so renumbered, the following clause shall be inserted, namely:—

"(ee) the matters specified in Chapter X-A;";

(ii) after clause (eec), the following clause shall be inserted, namely:—

“(eed) remuneration of Chairperson and members of the Approving Panel under sub-section (18) and procedure and manner for constitution of, functioning and disposal of references by, the Approving Panel under sub-section (21) of section 144BA;”.

Amendment
of Fourth
Schedule.

60. In the Fourth Schedule to the Income-tax Act, in Part A, in rule 3, in sub-rule (1), in the first proviso, for the figures, letters and words “31st day of March, 2013”, the figures, letters and words “31st day of March, 2014” shall be substituted.

Wealth-tax

Amendment
of section 2.

61. In section 2 of the Wealth-tax Act, 1957 (hereinafter referred to as the Wealth-tax Act), in clause (ea), in *Explanation 1*,— 27 of 1957.

(A) in clause (b), for the words “but does not include land on which construction of a building”, the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1993, namely:—

“but does not include land classified as agricultural land in the records of the Government and used for agricultural purposes or land on which construction of a building”;

(B) for clause (b) as so amended, the following clause shall be substituted with effect from the 1st day of April, 2014, namely:—

“(b) “urban land” means land situate—

(i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(ii) in any area within the distance, measured aially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of more than ten lakh,

but does not include land classified as agricultural land in the records of the Government and used for agricultural purposes or land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated or the land occupied by any building which has been constructed with the approval of the appropriate authority or any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him or any land held by the assessee as stock-in-trade for a period of ten years from the date of its acquisition by him.

Explanation.—For the purposes of clause (b) of *Explanation 1*, “population” means the population according to the last preceding census of which the relevant figures have been published before the date of valuation.”

62. After section 14 of the Wealth-tax Act, the following sections shall be inserted with effect from the 1st day of June, 2013, namely:—

Insertion of new sections 14A and 14B.

“14A. The Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents, which are otherwise under any other provisions of this Act, except section 14B, required to be furnished, along with the return but on demand to be produced before the Assessing Officer.

Power of Board to dispense with furnishing documents, etc., with return of wealth.

14B. The Board may make rules providing for—

Filing of return in electronic form.

(a) the class or classes of persons who shall be required to furnish the return in electronic form;

(b) the form and the manner in which the return in electronic form may be furnished;

(c) the documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents which may not be furnished along with the return in electronic form but shall be produced before the Assessing Officer on demand;

(d) the computer resource or the electronic record to which the return in electronic form may be transmitted.”

63. In section 46 of the Wealth-tax Act, in sub-section (2), after clause (b), the following clauses shall be inserted with effect from the 1st day of June, 2013, namely:—

Amendment of section 46.

“(ba) the documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents which may not be furnished along with the return but shall be produced before the Assessing Officer on demand under section 14A;

(bb) the class or classes of persons who shall be required to furnish the return in electronic form; the form and the manner in which the return in electronic form may be furnished; the documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents which may not be furnished along with the return in electronic form and the computer resource or electronic record to which such return may be transmitted under section 14B;”

CHAPTER IV

INDIRECT TAXES

Customs

52 of 1962.

64. In the Customs Act, 1962 (hereinafter referred to as the Customs Act), in section 11, in sub-section (2), in clause (n), for the words “and copyrights”, the words “copyrights, designs and geographical indications” shall be substituted.

Amendment of section 11.

65. In section 27 of the Customs Act, in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:—

Amendment of section 27.

“Provided also that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.”

66. In section 28 of the Customs Act, in sub-section (1), the following proviso shall be inserted, namely:—

Amendment of section 28.

“Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.”

Amendment
of section
28BA.

67. In section 28BA of the Customs Act, in sub-section (1), for the words, brackets and figures "sub-section (1) of section 28", the words, brackets and figures "sub-section (1) or sub-section (4) of section 28" shall be substituted.

Amendment
of section 28E.

68. In section 28E of the Customs Act, for clause (a), the following clause shall be substituted, namely:—

'(a) "activity" means import or export and includes any new business of import or export proposed to be undertaken by the existing importer or exporter, as the case may be;'

Amendment
of section 29.

69. In section 29 of the Customs Act, in sub-section (1), after the words "as the case may be", the words " , unless permitted by the Board" shall be inserted.

Amendment
of section 30.

70. In section 30 of the Customs Act, in sub-section (1),—

(a) for the words "an import manifest prior to the arrival", the words "an import manifest by presenting electronically prior to the arrival" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that the Commissioner of Customs may, in cases where it is not feasible to deliver import manifest by presenting electronically, allow the same to be delivered in any other manner."

Amendment
of section 41.

71. In section 41 of the Customs Act, in sub-section (1),—

(a) for the words "export manifest", the words "export manifest by presenting electronically" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that the Commissioner of Customs may, in cases where it is not feasible to deliver the export manifest by presenting electronically, allow the same to be delivered in any other manner."

Amendment
of section 47.

72. In section 47 of the Customs Act, in sub-section (2), for the words "five days", the words "two days" shall be substituted.

Amendment
of section 49.

73. In section 49 of the Customs Act,—

(a) for the words "be permitted to be stored in a public warehouse", the words "be permitted to be stored for a period not exceeding thirty days in a public warehouse" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that the Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time."

Amendment
of section 69.

74. In section 69 of the Customs Act, in sub-section (1), for clause (a), the following clause shall be substituted, namely:—

"(a) a shipping bill or a bill of export in the prescribed form or a label or declaration accompanying the goods as referred to in section 82 has been presented in respect of such goods."

Amendment
of section 104.

75. In section 104 of the Customs Act, for sub-section (6), the following sub-sections shall be substituted, namely:—

"(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under section 135 relating to—

(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees,

shall be non-bailable.

(7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.”.

76. In section 129B of the Customs Act, in sub-section (2A), after the second proviso, the following proviso shall be inserted, namely:—

Amendment
of section
129B.

“Provided also that where such appeal is not disposed of within the period specified in the first proviso, the Appellate Tribunal may, on an application made in this behalf by a party and on being satisfied that the delay in disposing of the appeal is not attributable to such party, extend the period of stay to such further period, as it thinks fit, not exceeding one hundred and eighty-five days, and in case the appeal is not so disposed of within the total period of three hundred and sixty-five days from the date of order referred to in the first proviso, the stay order shall, on the expiry of the said period, stand vacated.”.

77. In section 129C of the Customs Act, in sub-section (4), for the words “ten lakh rupees”, the words “fifty lakh rupees” shall be substituted.

Amendment
of section
129C.

78. In section 135 of the Customs Act, in sub-section (1), in clause (i), in sub-clauses (B) and (D), for the words “thirty lakh”, the words “fifty lakh” shall respectively be substituted.

Amendment
of section 135.

79. In section 142 of the Customs Act, in sub-section (1), after the proviso, the following clause shall be inserted, namely:—

Amendment
of section 142.

“(d) (i) the proper officer may, by a notice in writing, require any other person from whom money is due to such person or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before the payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under this section has been issued, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Chapter shall follow.”.

80. Section 143A of the Customs Act shall be omitted.

Omission of
section 143A.

81. In section 144 of the Customs Act, in sub-section (3), the words “, if such duty amounts to five rupees or more” shall be omitted.

Amendment
of section 144.

82. For section 146 of the Customs Act, the following section shall be substituted, namely:—

Substitution of
new section for
section 146.

“146. (1) No person shall carry on business as a customs broker relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted in this behalf in accordance with the regulations.

Licence for
customs
brokers.

(2) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may provide for—

(a) the authority by which a licence may be granted under this section and the period of validity of such licence;

(b) the form of the licence and the fees payable therefor;

(c) the qualifications of persons who may apply for a licence and the qualifications of persons to be employed by a licensee to assist him in his work as a customs broker;

(d) the manner of conducting the examination;

(e) the restrictions and conditions (including the furnishing of security by the licensee) subject to which a licence may be granted;

(f) the circumstances in which a licence may be suspended or revoked: and

(g) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeal may be filed."

Amendment
of section
146A.

83. In section 146A of the Customs Act,—

(a) in sub-section (2), in clause (b), for the words "customs house agent", the words "customs broker" shall be substituted;

(b) in sub-section (4),—

(i) for clause (b), the following clause shall be substituted, namely:—

"(b) who is convicted of an offence connected with any proceeding under this Act, the Central Excise Act, 1944, the Gold (Control) Act, 1968 or the Finance Act, 1994; or";

(ii) for the words, figures and brackets "Central Excises and Salt Act, 1944 or the Gold (Control) Act, 1968", the words, figures and brackets "Central Excise Act, 1944 or the Gold (Control) Act, 1968 or the Finance Act, 1994" shall be substituted.

1 of 1944.
45 of 1968.
32 of 1994.
1 of 1944.
45 of 1968.
32 of 1994.

Amendment
of section 147.

84. In section 147 of the Customs Act, in sub-section (3), after the words "for such purposes", the words "including liability therefor under this Act" shall be inserted.

Amendment
of notification
issued under
sub-section
(1) of section
25 of
Customs Act
retros-
pectively.

85. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 153(E), dated the 1st March, 2011, issued under sub-section (1) of section 25 of the Customs Act, 1962 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Second Schedule, on and from the date specified in column (3) of that Schedule.

52 of 1962.

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the notification referred to in sub-section (1) with retrospective effect as if the Central Government had the power to amend the said notification under sub-section (1) of section 25 of the Customs Act, 1962 retrospectively, at all material times.

52 of 1962.

(3) The refund shall be made of all such duty of customs which has been collected but which would not have been so collected, had the notification referred to in sub-section (1), been in force at all material times.

(4) Notwithstanding anything contained in the Customs Act, 1962, an application for the claim of refund of duty of customs shall be made within six months from the date on which the Finance Bill, 2013 receives the assent of the President.

52 of 1962.

52 of 1962. *Explanation.*—For the removal of doubts, it is hereby declared that the provisions of section 27 of the Customs Act, 1962, shall be applicable in case of refunds under this section.

Customs Tariff

51 of 1975. 86. In the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), the First Schedule shall be amended in the manner specified in the Third Schedule. Amendment of First Schedule.

87. In the Customs Tariff Act,—

(a) in the Second Schedule, against Sl. No. 43, for the entry in column (2), the entry “7210, 7212” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of March, 2011:

Amendment of Second Schedule.

(b) the Second Schedule shall be amended in the manner specified in the Fourth Schedule.

Excise

1 of 1944. 88. In the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act), in section 9, in sub-section (1), in clause (i), for the words “thirty lakh”, the words “fifty lakh” shall be substituted. Amendment of section 9.

89. In section 9A of the Central Excise Act, for sub-section (1), the following sub-sections shall be substituted, namely:— Amendment of section 9A.

2 of 1974. “(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under section 9, except the offences referred to in sub-section (1A), shall be non-cognizable within the meaning of that Code.

(1A) The offences relating to excisable goods where the duty leviable thereon under this Act exceeds fifty lakh rupees and punishable under clause (b) or clause (bbbb) of sub-section (1) of section 9, shall be cognizable and non-bailable.”

90. Section 11 of the Central Excise Act shall be renumbered as sub-section (1) thereof, and in sub-section (1) as so renumbered,— Amendment of section 11.

(a) for the portion beginning with the words “may deduct” and ending with the words “or may recover the amount”, the following shall be substituted, namely:—

52 of 1962. “may deduct or require any other Central Excise Officer or a proper officer referred to in section 142 of the Customs Act, 1962 to deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may be in the hands or under disposal or control of such other officer, or may recover the amount”;

(b) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) (i) The Central Excise Officer may, by a notice in writing, require any other person from whom money is due to such person, or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary

to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in a case where the person to whom a notice under this sub-section has been issued, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be a person from whom duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or the rules made thereunder have become due, in respect of the amount specified in the notice and all the consequences under this Act shall follow.”

Amendment of
section 11A.

91. In section 11A of the Central Excise Act, after sub-section (7), the following sub-section shall be inserted, namely:—

“(7A) Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (4) or sub-section (5), the Central Excise Officer may, serve, subsequent to any notice or notices served under any of those sub-sections, as the case may be, a statement, containing the details of duty of central excise not levied or paid or short-levied or short-paid or erroneously refunded for the subsequent period, on the person chargeable to duty of central excise, then, service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1) or sub-section (3) or sub-section (4) or sub-section (5), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice or notices.”

Amendment
of section
11DDA.

92. In section 11DDA of the Central Excise Act, in sub-section (1), the words, brackets and figure “sub-section (1) of” shall be omitted.

Amendment of
section 20.

93. In section 20 of the Central Excise Act, for the words “shall either admit him”, the words “shall, where the offence is non-cognizable, either admit him” shall be substituted.

Amendment of
section 21.

94. In section 21 of the Central Excise Act, in sub-section (2), in the proviso,—

(i) in clause (a), for the words “shall either admit him”, the words “shall, where the offence is non-cognizable, either admit him” shall be substituted;

(ii) in clause (b), after the words “against the accused person”, the words “in respect of offence which is non-cognizable” shall be inserted.

Amendment of
section 23A.

95. In section 23A of the Central Excise Act, for clause (a), the following clause shall be substituted, namely:—

“(a) “activity” means production or manufacture of goods and includes any new business of production or manufacture proposed to be undertaken by the existing producer or manufacturer, as the case may be;”

Amendment of
section 23C.

96. In section 23C of the Central Excise Act, in sub-section (2), in clause (e), for the words “admissibility of credit of excise duty”, the words “admissibility of credit of service tax paid or deemed to have been paid on input service or excise duty” shall be substituted.

Amendment of
section 23F.

97. In section 23F of the Central Excise Act, in sub-section (1), for the word, figures and letter “section 28-I”, the word, figures and letter “section 23D” shall be substituted.

Amendment of
section 35C.

98. In section 35C of the Central Excise Act, in sub-section (2A), after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that where such appeal is not disposed of within the period specified in the first proviso, the Appellate Tribunal may, on an application made in this behalf by a party and on being satisfied that the delay in disposing of the appeal is not attributable to such party, extend the period of stay to such further period, as it thinks fit, not exceeding one hundred and eighty-five days, and in case the appeal is not so disposed of within the total period of three hundred and sixty-five days from the date of order referred to in the first proviso, the stay order shall, on the expiry of the said period, stand vacated.”

99. In section 35D of the Central Excise Act, in sub-section (3), for the words "ten lakh rupees", the words "fifty lakh rupees" shall be substituted.

Amendment of section 35D.

100. In section 37C of the Central Excise Act,—

Amendment of section 37C.

(i) in sub-section (1), in clause (a), after the words "registered post with acknowledgement due", the words and figures "or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963" shall be inserted;

54 of 1963.

(ii) in sub-section (2), after the words "delivered by post", the words, brackets and figure "or courier referred to in sub-section (1)" shall be inserted.

101. The Third Schedule to the Central Excise Act shall be amended in the manner specified in the Fifth Schedule.

Amendment of Third Schedule.

Central Excise Tariff

102. In the Central Excise Tariff Act, 1985 (hereinafter referred to as the Central Excise Tariff Act), the First Schedule shall be amended in the manner specified in the Sixth Schedule.

5 of 1986.

Amendment of First Schedule.

CHAPTER V

SERVICE TAX

103. In the Finance Act, 1994,—

Amendment of Act 32 of 1994.

(A) in section 65B,—

(i) in clause (11),—

(a) in sub-clause (i), after the words "National Council for Vocational Training", the words "or State Council for Vocational Training" shall be inserted;

(b) in sub-clause (ii), the word "or" occurring at the end shall be omitted;

(c) sub-clause (iii) shall be omitted;

(ii) in clause (40), after the words and figures "the Central Excise Act, 1944", the words, brackets and figures "or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955" shall be inserted;

1 of 1944.
16 of 1955.

(B) in section 66B, the *Explanation* shall be omitted;

(C) after section 66B, the following section shall be inserted, namely:—

"66BA. (1) For the purpose of levy and collection of service tax, any reference to section 66 in the Finance Act, 1994 or any other Act for the time being in force, shall be construed as reference to section 66B thereof.

32 of 1994.

(2) The provisions of this section shall be deemed to have come into force on the 1st day of July, 2012."

Reference to section 66 to be construed as reference to section 66B.

(D) in section 66D, in clause (a), in sub-clause (i), the word "seed" shall be omitted;

(E) in section 73, after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Where any appellate authority or tribunal or court concludes that the notice issued under the proviso to sub-section (1) is not sustainable for the reason that the charge of,—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax,

has not been established against the person chargeable with the service tax, to whom the notice was issued, the Central Excise Officer shall determine the service tax payable by such person for the period of eighteen months, as if the notice was issued for the offences for which limitation of eighteen months applies under sub-section (1).";

(F) in section 77, in sub-section (1), for clause (a), the following clause shall be substituted, namely:—

"(a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to ten thousand rupees;"

(G) after section 78, the following section shall be inserted, namely:—

"78A. Where a company has committed any of the following contraventions, namely:—

(a) evasion of service tax; or

(b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or

(c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due,

then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees.";

(H) in section 83, for the figure and letter "9A", the words, brackets, figures and letter "sub-section (2) of section 9A" shall be substituted;

(I) in section 86, in sub-section (5), for the word, brackets and figure "sub-section (3)", the words, brackets and figures "sub-section (1) or sub-section (3)" shall be substituted;

(J) in section 89,—

(a) in sub-section (1), for clauses (i) and (ii), the following clauses shall be substituted, namely:—

"(i) in the case of an offence specified in clause (a), (b) or (c) where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

(ii) in the case of the offence specified in clause (d), where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to seven years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

Penalty for
offences by
director, etc.,
of company.

(iii) in the case of any other offences, with imprisonment for a term, which may extend to one year.";

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) If any person is convicted of an offence punishable under—

(a) clause (i) or clause (iii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to three years;

(b) clause (ii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to seven years.";

(K) after section 89, the following sections shall be inserted, namely:—

"90. (1) An offence under clause (ii) of sub-section (1) of section 89 shall be cognizable. Cognizance of offences.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences, except the offences specified in sub-section (1), shall be non-cognizable and bailable.

91. (1) If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) of clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person. Power to arrest.

(2) Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.

2 of 1974.

(3) In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973.

2 of 1974.

(4) All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.";

(L) in section 95, after sub-section (1-I), the following sub-section shall be inserted, namely:—

32 of 1994.

"(1J) If any difficulty arises in giving effect to section 103 of the Finance Act, 2013, in so far as it relates to amendments made by the Finance Act, 2013 in Chapter V of the Finance Act, 1994, the Central Government may, by an order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2013 receives the assent of the President.";

(M) after section 98, the following section shall be inserted, namely:—

"99. (1) Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, or in section 66B, no service tax shall be levied or collected in respect of taxable services provided by the Indian Railways during the period prior to the 1st day of October, 2012.

(2) No refund shall be made of service tax paid in respect of taxable services provided by the Indian Railways during the said period prior to the 1st day of October, 2012." Special provision for taxable services provided by Indian Railways.

CHAPTER VI

SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013

Short title. **104.** This Scheme may be called the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

Definitions. **105.** (1) In this Scheme, unless the context otherwise requires,—

(a) “Chapter” means Chapter V of the Finance Act, 1994;

32 of 1994.

(b) “declarant” means any person who makes a declaration under sub-section (1) of section 107;

(c) “designated authority” means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;

(d) “prescribed” means prescribed by rules made under this Scheme;

(e) “tax dues” means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.

(2) Words and expressions used herein and not defined but defined in the Chapter or the rules made thereunder shall have the meanings respectively assigned to them in the Chapter or the rules made thereunder.

Person who may make declaration of tax dues.

106. (1) Any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the 1st day of March, 2013:

Provided that any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return:

Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

(2) Where a declaration has been made by a person against whom,—

(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of—

(i) search of premises under section 82 of the Chapter; or

(ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable to the Chapter under section 83 thereof; or

1 of 1944.

(iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or

(b) an audit has been initiated,

and such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

Procedure for making declaration and payment of tax dues.

107. (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent. of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4), the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

108. (1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

Immunity from penalty, interest and other proceeding.

(2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

109. Any amount paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any circumstances.

No refund of amount paid under the Scheme.

110. Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recovered under the provisions of section 87 of the Chapter.

Tax dues declared but not paid.

111. (1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.

Failure to make true declaration.

(2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.

(3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

112. For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 108.

Removal of doubts.

Power to
remove
difficulties.

113. (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to
make rules.

114. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and the manner in which a declaration may be made under sub-section (1) of section 107;

(b) the form and the manner of acknowledging the declaration under sub-section (2) of section 107;

(c) the form and the manner of issuing the acknowledgement of discharge of tax dues under sub-section (7) of section 107;

(d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

CHAPTER VII

COMMODITIES TRANSACTION TAX

Extent,
commencement
and
application.

115. (1) This Chapter extends to the whole of India.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to taxable commodities transactions entered into on or after the commencement of this Chapter.

Definitions.

116. In this Chapter, unless the context otherwise requires,—

(1) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 of the Income-tax Act, 1961;

43 of 1961.

(2) "Assessing Officer" means the Income-tax Officer or Assistant Commissioner of Income-tax or Deputy Commissioner of Income-tax or Joint Commissioner of Income-tax or Additional Commissioner of Income-tax who is authorised by the Board to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Chapter;

(3) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963;

54 of 1963.

(4) "commodities transaction tax" means tax leviable on the taxable commodities transactions under the provisions of this Chapter;

(5) "commodity derivative" means—

- (i) a contract for delivery of goods which is not a ready delivery contract; or
- (ii) a contract for differences which derives its value from prices or indices of prices—

(A) of such underlying goods; or

(B) of related services and rights, such as warehousing and freight; or

(C) with reference to weather and similar events and activities,

having a bearing on the commodity sector;

(6) "prescribed" means prescribed by rules made under this Chapter;

(7) "taxable commodities transaction" means a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognised associations;

(8) words and expressions used but not defined in this Chapter and defined in the Forward Contracts (Regulation) Act, 1952, the Income-tax Act, 1961, or the rules made thereunder, shall have the meanings respectively assigned to them in those Acts.

74 of 1952.
43 of 1961.

117. On and from the date of commencement of this Chapter, there shall be charged a commodities transaction tax in respect of every taxable commodities transaction, being sale of commodity derivative, at the rate of 0.01 per cent. on the value of such transaction and such tax shall be payable by the seller.

Charge of
commodities
transaction
tax.

118. The value of a taxable commodities transaction referred to in section 117 shall, with reference to such transaction, be the price at which the commodity derivative is traded.

Value of
taxable
commodities
transaction.

119. (1) Every recognised association (hereinafter in this Chapter referred to as assessee) shall collect the commodities transaction tax from the seller who enters into a taxable commodities transaction in that recognised association at the rate specified in section 117.

Collection and
recovery of
commodities
transaction
tax.

(2) The commodities transaction tax collected during any calendar month in accordance with the provisions of sub-section (1) shall be paid by every assessee to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.

(3) Any assessee who fails to collect the tax in accordance with the provisions of sub-section (1) shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (2).

120. (1) Every assessee shall, within the prescribed time after the end of each financial year, prepare and deliver or cause to be delivered to the Assessing Officer or to any other authority or agency authorised by the Board in this behalf, a return in such form, verified in such manner and setting forth such particulars as may be prescribed, in respect of all taxable commodities transactions entered into during such financial year in that recognised association.

Furnishing of
return.

(2) Where any assessee fails to furnish the return under sub-section (1) within the prescribed time, the Assessing Officer may issue a notice to such assessee and serve it upon him, requiring him to furnish the return in the prescribed form and verified in the prescribed manner setting forth such particulars within such time as may be prescribed.

(3) An assessee who has not furnished the return within the time prescribed under sub-section (1) or sub-section (2), or having furnished a return under sub-section (1) or sub-section (2) notices any omission or wrong statement therein, may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

Assessment.

121. (1) For the purposes of making an assessment under this Chapter, the Assessing Officer may serve on any assessee, who has furnished a return under section 120 or upon whom a notice has been served under sub-section (2) of that section (whether a return has been furnished or not), a notice requiring him to produce or cause to be produced on a date to be specified therein such accounts or documents or other evidence as the Assessing Officer may require for the purposes of this Chapter and may, from time to time, serve further notices requiring the production of such further accounts or documents or other evidence as he may require.

(2) The Assessing Officer, after considering such accounts, documents or other evidence, if any, as he has obtained under sub-section (1) and after taking into account any other relevant material which he has gathered, shall, by an order in writing, assess the value of taxable commodities transactions during the relevant financial year and determine the commodities transaction tax payable or the refund due on the basis of such assessment:

Provided that no assessment shall be made under this sub-section after the expiry of two years from the end of the relevant financial year.

(3) Every assessee, in case any amount is refunded to it on assessment under sub-section (2), shall, within such time as may be prescribed, refund such amount to the seller from whom such amount was collected.

Rectification of mistake.

122. (1) With a view to rectifying any mistake apparent from the record, the Assessing Officer may amend any order passed by him under the provisions of this Chapter within one year from the end of the financial year in which the order sought to be amended was passed.

(2) Where any matter has been considered and decided in any proceeding by way of appeal relating to an order referred to in sub-section (1), the Assessing Officer passing such order may, notwithstanding anything contained in any other law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) Subject to the other provisions of this section, the Assessing Officer may make an amendment under sub-section (1), either *suo motu* or on any mistake brought to his notice by the assessee.

(4) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the Assessing Officer has given notice to the assessee of his intention so to do and has given the assessee a reasonable opportunity of being heard.

(5) An order of amendment under this section shall be made by the Assessing Officer in writing.

(6) Subject to the other provisions of this Chapter, where any such amendment has the effect of reducing the assessment, the Assessing Officer shall make the refund, which may be due to such assessee.

(7) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the Assessing Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

Interest on delayed payment of commodities transaction tax.

123. Every assessee, who fails to credit the commodities transaction tax or any part thereof as required under section 119 to the account of the Central Government within the period specified in that section, shall pay simple interest at the rate of one per cent. of such tax for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

Penalty for failure to collect or pay commodities transaction tax.

124. Any assessee who—

(a) fails to collect the whole or any part of the commodities transaction tax as required under section 119; or

(b) having collected the commodities transaction tax, fails to pay such tax to the credit of the Central Government in accordance with the provisions of sub-section (2) of that section,

shall be liable to pay,—

(i) in the case referred to in clause (a), in addition to paying the tax in accordance with the provisions of sub-section (3) of that section, or interest, if any, in accordance with the provisions of section 123, by way of penalty, a sum equal to the amount of commodities transaction tax that he failed to collect; and

(ii) in the case referred to in clause (b), in addition to paying the tax in accordance with the provisions of sub-section (2) of that section and interest in accordance with the provisions of section 123, by way of penalty, a sum of one thousand rupees for every day during which the failure continues; so, however, that the penalty under this clause shall not exceed the amount of commodities transaction tax that he failed to pay.

125. Where an assessee fails to furnish the return within the time prescribed under sub-section (1) or sub-section (2) of section 120, he shall be liable to pay, by way of penalty, a sum of one hundred rupees for each day during which the failure continues.

Penalty for failure to furnish return.

126. If the Assessing Officer in the course of any proceedings under this Chapter is satisfied that the assessee has failed to comply with a notice under sub-section (1) of section 121, he may direct that such assessee shall pay, by way of penalty, in addition to any commodities transaction tax and interest, if any, payable by him, a sum of ten thousand rupees for each such failure.

Penalty for failure to comply with notice.

127. (1) Notwithstanding anything contained in section 124 or section 125 or section 126, no penalty shall be imposable for any failure referred to in the said sections, if the assessee proves to the satisfaction of the Assessing Officer that there was reasonable cause for the said failure.

Penalty not to be imposed in certain cases

(2) No order imposing a penalty under this Chapter shall be made unless the assessee has been given a reasonable opportunity of being heard.

43 of 1961. 128. The provisions of sections 120, 131, 133A, 156, 178, 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293 of the Income-tax Act, 1961 shall apply, so far as may be, in relation to commodities transaction tax, as they apply in relation to income-tax.

Application of certain provisions of Income-tax Act.

129. (1) An assessee aggrieved by any assessment order made by the Assessing Officer under section 121 or any order under section 122, or denying his liability to be assessed under this Chapter, or by an order imposing penalty under this Chapter, may appeal to the Commissioner of Income-tax (Appeals) within thirty days from the date of receipt of the order of the Assessing Officer.

Appeal to Commissioner of Income-tax (Appeals).

(2) An appeal under sub-section (1) shall be in such form and verified in such manner as may be prescribed and shall be accompanied by a fee of one thousand rupees.

43 of 1961. (3) Where an appeal has been filed under sub-section (1), the provisions of sections 249 to 251 of the Income-tax Act, 1961, shall, as far as may be, apply to such appeal.

130. (1) An assessee aggrieved by an order made by a Commissioner of Income-tax (Appeals) under section 129 may appeal to the Appellate Tribunal against such order.

Appeal to Appellate Tribunal.

(2) The Commissioner of Income-tax may, if he objects to any order passed by the Commissioner of Income-tax (Appeals) under section 129, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

(3) An appeal under sub-section (1) or sub-section (2) shall be filed within sixty days from the date on which the order sought to be appealed against is received by the assessee or by the Commissioner of Income-tax, as the case may be.

(4) An appeal under sub-section (1) or sub-section (2) shall be in such form and verified in such manner as may be prescribed and, in the case of an appeal filed under sub-section (1), it shall be accompanied by a fee of one thousand rupees.

(5) Where an appeal has been filed before the Appellate Tribunal under sub-section (1) or sub-section (2), the provisions of sections 253 to 255 of the Income-tax Act, 1961, shall, as far as may be, apply to such appeal. 43 of 1961.

Punishment
for false
statement.

131. (1) If a person makes a false statement in any verification under this Chapter or any rule made thereunder, or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years and with fine.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sub-section (1) shall be deemed to be non-cognizable within the meaning of that Code. 2 of 1974.

Institution of
prosecution.

132. No prosecution shall be instituted against any person for any offence under section 131 except with the previous sanction of the Chief Commissioner of Income-tax.

Power to
make rules.

133. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which and the form and the manner in which the return shall be delivered or caused to be delivered or furnished under section 120;

(b) the form in which an appeal may be filed and the manner in which it may be verified under sections 129 and 130.

(3) Every rule made under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to
remove
difficulties.

134. (1) If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Chapter come into force.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

CHAPTER VIII

MISCELLANEOUS

Amendment
of Act 23 of
2004.

135. In the Finance (No. 2) Act, 2004, in section 98, in the Table, with effect from the 1st day of June, 2013,—

(i) against Sl. No. 1, under column (2) relating to taxable securities transaction,—

(A) the words “or a unit of an equity oriented fund,” shall be omitted;

(B) in item (b), the words “or unit”, at both the places where they occur, shall be omitted;

(ii) against Sl. No. 2, under column (2) relating to taxable securities transaction,—

(A) the words “or a unit of an equity oriented fund,” shall be omitted;

(B) in item (b), the words “or unit”, at both the places where they occur, shall be omitted;

(iii) after serial number 2 and the entries relating thereto, the following serial number and entries shall be inserted, namely:—

Sl. No.	Taxable securities transaction	Rate	Payable by
(1)	(2)	(3)	(4)
"2A	<p>Sale of a unit of an equity oriented fund, where—</p> <p>(a) the transaction of such sale is entered into in a recognised stock exchange; and</p> <p>(b) the contract for the sale of such unit is settled by the actual delivery or transfer of such unit.</p>	0.001 per cent.	Seller";

(iv) against Sl. No. 4, in item (c), under column (3) relating to rate, for the figures “0.017”, the figures “0.01” shall be substituted;

(v) against Sl. No. 5, under column (3) relating to rate, for the figures “0.25”, the figures “0.001” shall be substituted.

THE FIRST SCHEDULE

(See section 2)

PART I

INCOME-TAX

Paragraph A

(I) In the case of every individual other than the individual referred to in items (II) and (III) of this Paragraph or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- | | |
|---|---|
| (1) where the total income does not exceed Rs. 2,00,000 | Nil; |
| (2) where the total income exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000 | 10 per cent. of the amount by which the total income exceeds Rs. 2,00,000; |
| (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 | Rs. 30,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (4) where the total income exceeds Rs. 10,00,000 | Rs. 1,30,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000. |

(II) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Rates of income-tax

- | | |
|---|---|
| (1) where the total income does not exceed Rs. 2,50,000 | Nil; |
| (2) where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000 | 10 per cent. of the amount by which the total income exceeds Rs. 2,50,000; |
| (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 | Rs. 25,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (4) where the total income exceeds Rs. 10,00,000 | Rs. 1,25,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000. |

(III) In the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year,—

Rates of income-tax

- | | |
|---|---|
| (1) where the total income does not exceed Rs. 5,00,000 | Nil; |
| (2) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 | 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (3) where the total income exceeds Rs. 10,00,000 | Rs. 1,00,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000. |

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

- | | |
|--|---|
| (1) where the total income does not exceed Rs. 10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |

(3) where the total income exceeds Rs. 20,000

Rs. 3,000 *plus* 30 per cent. of the amount by which the total income exceeds Rs. 20,000.*Paragraph C*

In the case of every firm,—

Rate of income-tax

On the whole of the total income

30 per cent.

Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income

30 per cent.

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company

30 per cent. of the total income;

II. In the case of a company other than a domestic company—

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government

50 per cent.;

(ii) on the balance, if any, of the total income

40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated,—

(i) in the case of every domestic company having a total income exceeding one crore rupees, at the rate of five per cent. of such income-tax;

(ii) in the case of every company other than a domestic company having a total income exceeding one crore rupees, at the rate of two per cent. of such income-tax:

Provided that in the case of every company having a total income exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

PART II

RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES

In every case in which under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, tax is to be deducted at the rates in force, deduction shall be made from the income subject to the

deduction at the following rates:—

1. In the case of a person other than a company—

(a) where the person is resident in India—

- | | |
|---|----------------|
| (i) on income by way of interest other than "Interest on securities" | 10 per cent. ; |
| (ii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort | 30 per cent. ; |
| (iii) on income by way of winnings from horse races | 30 per cent. ; |
| (iv) on income by way of insurance commission | 10 per cent. ; |
| (v) on income by way of interest payable on— | 10 per cent. ; |

(A) any debentures or securities for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;

(B) any debentures issued by a company where such debentures are listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder;

(C) any security of the Central or State Government;

(vi) on any other income	10 per cent. ;
--------------------------	----------------

(b) where the person is not resident in India—

(i) in the case of a non-resident Indian—

- | | |
|--|----------------|
| (A) on any investment income | 20 per cent. ; |
| (B) on income by way of long-term capital gains referred to in section 115E or sub-clause (iii) of clause (c) of sub-section (1) of section 112 | 10 per cent. ; |
| (C) on income by way of short-term capital gains referred to in section 111A | 15 per cent. ; |
| (D) on other income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10] | 20 per cent. ; |
| (E) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in section 194LB or section 194LC) | 20 per cent. ; |
| (F) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it, on or after the 1st day of April, 1976, with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India | 25 per cent. ; |
| (G) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(i)(F)] payable by Government or an Indian concern in pursuance of an agreement made by it, on or after the 1st day of April, 1976, with the Government or the Indian concern and where such | 25 per cent. ; |

agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy

(H) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it, on or after the 1st day of April, 1976, with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy 25 per cent. ;

(I) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent. ;

(J) on income by way of winnings from horse races 30 per cent. ;

(K) on the whole of the other income 30 per cent. ;

(ii) in the case of any other person—

(A) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in section 194LB or section 194LC) 20 per cent. ;

(B) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it, on or after the 1st day of April, 1976, with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India 25 per cent. ;

(C) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(ii)(B)] payable by Government or an Indian concern in pursuance of an agreement made by it, on or after the 1st day of April, 1976, with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy 25 per cent. ;

(D) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it, on or after the 1st day of April, 1976, with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy 25 per cent. ;

(E) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent. ;

(F) on income by way of winnings from horse races 30 per cent. ;

	Rate of income-tax
(G) on income by way of short-term capital gains referred to in section 111A	15 per cent. ;
(H) on income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-section (1) of section 112	10 per cent. ;
(I) on other income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10]	20 per cent. ;
(J) on the whole of the other income	30 per cent. .
2. In the case of a company—	
(a) where the company is a domestic company—	
(i) on income by way of interest other than "Interest on securities"	10 per cent. ;
(ii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent. ;
(iii) on income by way of winnings from horse races	30 per cent. ;
(iv) on any other income	10 per cent. ;
(b) where the company is not a domestic company—	
(i) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent. ;
(ii) on income by way of winnings from horse races	30 per cent. ;
(iii) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in section 194LB or section 194LC)	20 per cent. ;
(iv) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976, where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India	25 per cent. ;
(v) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(iv)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
(A) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976	50 per cent. ;
(B) where the agreement is made after the 31st day of March, 1976	25 per cent. ;
(vi) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the	

industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976 50 per cent. ;

(B) where the agreement is made after the 31st day of March, 1976 25 per cent. ;

(vii) on income by way of short-term capital gains referred to in section 111A 15 per cent. ;

(viii) on income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-section (1) of section 112 10 per cent. ;

(ix) on other income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10] 20 per cent. ;

(x) on any other income 40 per cent. .

Explanation.— For the purpose of item 1(b)(i) of this Part, "investment income" and "non-resident Indian" shall have the meanings assigned to them in Chapter XII-A of the Income-tax Act.

Surcharge on income-tax

The amount of income-tax deducted in accordance with the provisions of—

(i) item 1 of this Part, shall be increased by a surcharge, for purposes of the Union, in the case of every person being a non-resident, calculated at the rate of ten per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees;

(ii) item 2 of this Part, shall be increased by a surcharge, for purposes of the Union, in the case of every company other than a domestic company, calculated,—

(a) at the rate of two per cent. of such income-tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees; and

(b) at the rate of five per cent. of such income-tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten crore rupees.

PART III

RATES FOR CHARGING INCOME-TAX IN CERTAIN CASES, DEDUCTING INCOME-TAX FROM INCOME CHARGEABLE UNDER THE HEAD "SALARIES" AND COMPUTING "ADVANCE TAX"

In cases in which income-tax has to be charged under sub-section (4) of section 172 of the Income-tax Act or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or deducted from, or paid on, from income chargeable under the head "salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" [not being "advance tax" in respect of any income chargeable to tax under Chapter XII or Chapter XII-A or income chargeable to tax under section 115JB or section 115JC or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act at the rates as specified in that Chapter or section or surcharge, wherever applicable, on such "advance tax" in respect of any income chargeable to tax under section 115A or section 115AB or section 115AC or section 115ACA or section 115AD or section 115B or section 115BB or section 115BBA or section 115BBC or section 115BBD or section

115BBE or section 115E or section 115JB or section 115JC] shall be charged, deducted or computed at the following rate or rates:—

Paragraph A

(I) In the case of every individual other than the individual referred to in items (II) and (III) of this Paragraph or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- | | |
|---|--|
| (1) where the total income does not exceed Rs. 2,00,000 | <i>Nil</i> ; |
| (2) where the total income exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000 | 10 per cent. of the amount by which the total income exceeds Rs. 2,00,000; |
| (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 | Rs. 30,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (4) where the total income exceeds Rs. 10,00,000 | Rs. 1,30,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000. |

(II) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Rates of income-tax

- | | |
|---|--|
| (1) where the total income does not exceed Rs. 2,50,000 | <i>Nil</i> ; |
| (2) where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000 | 10 per cent. of the amount by which the total income exceeds Rs. 2,50,000; |
| (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 | Rs. 25,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (4) where the total income exceeds Rs. 10,00,000 | Rs. 1,25,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000. |

(III) In the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year,—

Rates of income-tax

- | | |
|---|--|
| (1) where the total income does not exceed Rs. 5,00,000 | <i>Nil</i> ; |
| (2) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 | 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; |
| (3) where the total income exceeds Rs. 10,00,000 | Rs. 1,00,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, having a total income exceeding one crore rupees, be increased by a surcharge for the purpose of the Union calculated at the rate of ten per cent. of such income-tax:

Provided that in the case of persons mentioned above having total income exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

- | | |
|---|--|
| (1) where the total income does not exceed Rs.10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs.10,000 but does not exceed Rs. 20,000 | Rs.1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs.10,000; |
| (3) where the total income exceeds Rs. 20,000 | Rs. 3,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 20,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every co-operative society, having a total income exceeding one crore rupees, be increased by a surcharge for the purpose of the Union calculated at the rate of ten per cent. of such income-tax:

Provided that in the case of every co-operative society mentioned above having total income exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income 30 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every firm, having a total income exceeding one crore rupees, be increased by a surcharge for the purpose of the Union calculated at the rate of ten per cent. of such income-tax:

Provided that in the case of every firm mentioned above having total income exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income 30 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every local authority, having a total income exceeding one crore rupees, be increased by a surcharge for the purpose of the Union calculated at the rate of ten per cent. of such income-tax:

Provided that in the case of every local authority mentioned above having total income exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company 30 per cent. of the total income;

II. In the case of a company other than a domestic company—

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government 50 per cent;

(ii) on the balance, if any, of the total income 40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, be increased by a surcharge for purposes of the Union calculated,—

(i) in the case of every domestic company,—

(a) having a total income exceeding one crore rupees but not exceeding ten crore rupees, at the rate of five per cent. of such income-tax; and

(b) having a total income exceeding ten crore rupees, at the rate of ten per cent. of such income-tax;

(ii) in the case of every company other than a domestic company,—

(a) having a total income exceeding one crore rupees but not exceeding ten crore rupees, at the rate of two per cent. of such income-tax; and

(b) having a total income exceeding ten crore rupees, at the rate of five per cent. of such income-tax:

Provided that in the case of every company having a total income exceeding one crore rupees but not exceeding ten crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees:

Provided further that in the case of every company having a total income exceeding ten crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees by more than the amount of income that exceeds ten crore rupees.

PART IV

[See section 2(13)(c)]

RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME

Rule 1.—Agricultural income of the nature referred to in sub-clause (a) of clause (1A) of section 2 of the Income-tax Act shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from other sources" and the provisions of sections 57 to 59 of that Act shall, so far as may be, apply accordingly:

Provided that sub-section (2) of section 58 shall apply subject to the modification that the reference to section 40A therein shall be construed as not including a reference to sub-sections (3) and (4) of section 40A.

Rule 2.—Agricultural income of the nature referred to in sub-clause (b) or sub-clause (c) of clause (1A) of section 2 of the Income-tax Act [other than income derived from any building required as a dwelling-house by the receiver of the rent or revenue of the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c)] shall be computed as if it were income chargeable to income-tax under that Act under the head "Profits and gains of

business or profession" and the provisions of sections 30, 31, 32, 36, 37, 38, 40, 40A [other than sub-sections (3) and (4) thereof], 41, 43, 43A, 43B and 43C of the Income-tax Act shall, so far as may be, apply accordingly.

Rule 3.—Agricultural income of the nature referred to in sub-clause (c) of clause (1A) of section 2 of the Income-tax Act, being income derived from any building required as a dwelling-house by the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c) shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from house property" and the provisions of sections 23 to 27 of that Act shall, so far as may be, apply accordingly.

Rule 4.—Notwithstanding anything contained in any other provisions of these rules, in a case—

(a) where the assessee derives income from sale of tea grown and manufactured by him in India, such income shall be computed in accordance with rule 8 of the Income-tax Rules, 1962, and sixty per cent. of such income shall be regarded as the agricultural income of the assessee;

(b) where the assessee derives income from sale of centrifuged latex or cenex or latex based crepes (such as pale latex crepe) or brown crepes (such as estate brown crepe, re-milled crepe, smoked blanket crepe or flat bark crepe) or technically specified block rubbers manufactured or processed by him from rubber plants grown by him in India, such income shall be computed in accordance with rule 7A of the Income-tax Rules, 1962, and sixty-five per cent. of such income shall be regarded as the agricultural income of the assessee;

(c) where the assessee derives income from sale of coffee grown and manufactured by him in India, such income shall be computed in accordance with rule 7B of the Income-tax Rules, 1962, and sixty per cent. or seventy-five per cent., as the case may be, of such income shall be regarded as the agricultural income of the assessee.

Rule 5.—Where the assessee is a member of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) which in the previous year has either no income chargeable to tax under the Income-tax Act or has total income not exceeding the maximum amount not chargeable to tax in the case of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) but has any agricultural income then, the agricultural income or loss of the association or body shall be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed shall be regarded as the agricultural income or loss of the assessee.

Rule 6.—Where the result of the computation for the previous year in respect of any source of agricultural income is a loss, such loss shall be set off against the income of the assessee, if any, for that previous year from any other source of agricultural income:

Provided that where the assessee is a member of an association of persons or a body of individuals and the share of the assessee in the agricultural income of the association or body, as the case may be, is a loss, such loss shall not be set off against any income of the assessee from any other source of agricultural income.

Rule 7.—Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

Rule 8.—(1) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2013, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012, is a loss, then, for the purposes of sub-section (2) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2005, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2006, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2007, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2008, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2009, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2010, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2011 or the 1st day of April, 2012,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2011, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2012,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2012,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2013.

(2) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2014, or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013, is a loss, then, for the purposes of sub-section (10) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2006, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2007, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2008, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2009, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2010, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2011, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2012 or the 1st day of April, 2013,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2012, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2013,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2013,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2014.

(3) Where any person deriving any agricultural income from any source has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in sub-rule (1) or sub-rule (2) shall entitle any person, other than the person incurring the loss, to have it set off under sub-rule (1) or, as the case may be, sub-rule (2).

(4) Notwithstanding anything contained in this rule, no loss which has not been determined by the Assessing Officer under the provisions of these rules or the rules contained in the First Schedule to the Finance Act, 2005 (18 of 2005), or of the First Schedule to the Finance Act, 2006 (21 of 2006) or of the First Schedule to the Finance Act, 2007 (22 of 2007) or of the First Schedule to the Finance Act, 2008 (18 of 2008) or of the First Schedule to the Finance (No. 2) Act, 2009 (33 of 2009) or of the First Schedule to the Finance Act, 2010 (14 of 2010) or of the First Schedule to the Finance Act, 2011 (8 of 2011) or of the First Schedule to the Finance Act, 2012 (23 of 2012) shall be set off under sub-rule (1) or, as the case may be, sub-rule (2).

Rule 9.—Where the net result of the computation made in accordance with these rules is a loss, the loss so computed shall be ignored and the net agricultural income shall be deemed to be *nil*.

Rule 10.—The provisions of the Income-tax Act relating to procedure for assessment (including the provisions of section 288A relating to rounding off of income) shall, with the necessary modifications, apply in relation to the computation of the net agricultural income of the assessee as they apply in relation to the assessment of the total income.

Rule 11.—For the purposes of computing the net agricultural income of the assessee, the Assessing Officer shall have the same powers as he has under the Income-tax Act for the purposes of assessment of the total income.

THE SECOND SCHEDULE

(See section 85)

Notification number and date	Amendment	Date of effect of amendment
(1)	(2)	(3)
G.S.R. 153(E), dated the 1st day of March, 2011 [27/2011-Customs, dated the 1st day of March, 2011.]	In the said notification, in the Table, against Sl. No. 56, for the entry in column (2), the entry "7210, 7212" shall be substituted.	1st day of March, 2011.

THE THIRD SCHEDULE

(See section 86)

In the First Schedule to the Customs Tariff Act,—

(1) in Chapter 3,—

(a) in tariff item 0302 24 00, for the entry in column (2), the entry "Turbots (*Psetta maxima*)" shall be substituted;

(b) in tariff item 0303 34 00, for the entry in column (2), the entry "Turbots (*Psetta maxima*)" shall be substituted;

(2) in Chapter 8,—

(a) in tariff item 0801 32 10, for the entry in column (4), the entry "70%" shall be substituted;

(b) in tariff item 0801 32 20, for the entry in column (4), the entry "70%" shall be substituted;

(c) in tariff item 0801 32 90, for the entry in column (4), the entry "70%" shall be substituted;

(3) in Chapter 15, tariff item 1517 90 20 and the entries relating thereto shall be omitted;

(4) in Chapter 48,—

(a) the Note 13 shall be omitted;

(b) after the Sub-heading Note 7, the following shall be inserted, namely:—

"Supplementary Notes:

Notwithstanding anything contained in Note 12, if paper and paper products of heading 4811, 4816 or 4820 are printed with any character, name, logo, motif or format, they shall remain classified under the respective headings as long as such products are intended to be used for further printing or writing."

(5) in Chapter 87, for the entry in column (4) occurring against all the tariff items of heading 8703, the entry "125%" shall be substituted;

(6) in Chapter 89, for the entry in column (4) occurring against all the tariff items of heading 8903, the entry "25%" shall be substituted.

THE FOURTH SCHEDULE

[See section 87(b)]

In the Second Schedule to the Customs Tariff Act,—

(1) after Sl. No. 9 and the entries relating thereto, the following Sl. No. and entries shall be inserted, namely:—

(1)	(2)	(3)	(4)
"9A.	1701	Raw sugar, white or refined sugar	20%";

(2) after Sl. No. 23 and the entries relating thereto, the following Sl. No. and entries shall be inserted, namely:—

(1)	(2)	(3)	(4)
"23A.	2606 00 10	Bauxite (natural), not calcined	30%
23B.	2606 00 20	Bauxite (natural), calcined	30%";

(3) after Sl. No. 24 and the entries relating thereto, the following Sl. No. and entries shall be inserted, namely:—

(1)	(2)	(3)	(4)
"24A.	2614 00 10	Ilmenite, unprocessed	30%
24B.	2614 00 20	Ilmenite, upgraded (beneficiated ilmenite including ilmenite ground)	30%".

THE FIFTH SCHEDULE

(See section 101)

In the Third Schedule to the Central Excise Act,—

(a) after S.No. 31 and the entries relating thereto, the following S. No. and entries shall be inserted, namely:—

S.No.	Heading, sub-heading or tariff item	Description of goods
(1)	(2)	(3)
31A.	3004	<p>(i) Medicaments exclusively used in Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic systems, manufactured in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) or Homoeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homoeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia;</p> <p>(ii) Medicaments exclusively used in Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic systems and sold under a brand name.</p> <p><i>Explanation.</i>— For the purposes of this entry, "brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a medicament, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the medicament and some person using such name or mark with or without any indication of the identity of that person.;</p>

(b) against Sl. No. 64, for the entry in column (2), the entry "7615 10 11" shall be substituted.

THE SIXTH SCHEDULE

(See section 102)

In the First Schedule to the Central Excise Tariff Act,—

(1) in Chapter 3,—

(a) in tariff item 0302 24 00, for the entry in column (2), the entry "Turbots (*Psetta maxima*)" shall be substituted;(b) in tariff item 0303 34 00, for the entry in column (2), the entry "Turbots (*Psetta maxima*)" shall be substituted;

(2) in Chapter 15, tariff item 1517 90 20 and the entries relating thereto shall be omitted;

(3) in Chapter 24,—

(a) in tariff items 2402 10 10 and 2402 10 20, for the entry in column (4) occurring against each of them, the entry "12% or Rs. 1781 per thousand, whichever is higher" shall be substituted;

(b) in tariff item 2402 20 20, for the entry in column (4), the entry "Rs. 1772 per thousand" shall be substituted;

(c) in tariff item 2402 20 40, for the entry in column (4), the entry "Rs. 1249 per thousand" shall be substituted;

(d) in tariff item 2402 20 50, for the entry in column (4), the entry "Rs. 1772 per thousand" shall be substituted;

(e) in tariff item 2402 20 60, for the entry in column (4), the entry "Rs. 2390 per thousand" shall be substituted;

(f) in tariff item 2402 20 90, for the entry in column (4), the entry "Rs. 2875 per thousand" shall be substituted;

(g) in tariff item 2402 90 10, for the entry in column (4), the entry "Rs. 1511 per thousand" shall be substituted;

(h) in tariff items 2402 90 20 and 2402 90 90, for the entry in column (4) occurring against each of them, the entry "12% or Rs. 1738 per thousand, whichever is higher" shall be substituted;

(4) in Chapter 87, in tariff items 8703 23 10, 8703 23 91, 8703 23 92, 8703 23 99, 8703 24 10, 8703 24 91, 8703 24 92, 8703 24 99, 8703 32 10, 8703 32 91, 8703 32 92, 8703 32 99, 8703 33 10, 8703 33 91, 8703 33 92, 8703 33 99, 8703 90 90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted.

Sd/-

P. K. MALHOTRA,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,

Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 17th August, 2013.

No. RPB/37-2013/Act.-2-13/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 4th January, 2013, Pausa 14, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 3rd January, 2013, is hereby published for general information:-

THE PREVENTION OF MONEY-LAUNDERING

(AMENDMENT) ACT, 2012

AN

ACT

(Act No. 2 of 2013)

[3rd January, 2013]

further to amend the Prevention of Money-laundering Act, 2002.

BE It Enacted By Parliament In The Sixty-Third Year Of The Republic Of India As Follows:—

1. (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2012.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

15 of 2003.

2. In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),—

Amendment of
section 2.

(i) after clause (f), the following clause shall be inserted, namely:—

(fa) "beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;'

(ii) after clause (h), the following clause shall be inserted, namely:—

(ha) "client" means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting;'

(iii) after clause (i), the following clauses shall be inserted, namely:—

‘(ia) “corresponding law” means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences;

(ib) “dealer” has the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956;’

74 of 1956.

(iv) clause (ja) shall be omitted;

(v) for clause (l), the following clause shall be substituted, namely:—

‘(l) “financial institution” means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India;’

2 of 1934.

(vi) for clause (n), the following clause shall be substituted, namely:—

‘(n) “intermediary” means,—

(i) a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or

15 of 1992.

(ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or

74 of 1952.

(iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or

(iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;’

42 of 1956.

(vii) in clause (q), the words “and includes a person carrying on designated business or profession” shall be omitted;

(viii) in clause (ra), in sub-clause (i), for the word “remits”, the words “transfers in any manner” shall be substituted;

(ix) after clause (s), the following clauses shall be inserted, namely:—

‘(sa) “person carrying on designated business or profession” means,—

(i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;

(ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government;

16 of 1908.

(iii) real estate agent, as may be notified by the Central Government;

(iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;

(v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or

(vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time;

(sb) "precious metal" means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;

(sc) "precious stone" means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;";

(x) after clause (v), the following shall be inserted, namely:—

Explanation.—For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

(va) "real estate agent" means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994;";

(xi) after clause (w), the following clause shall be inserted, namely:—

(wa) "reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;".

3. In section 3 of the principal Act, for the words "proceeds of crime and projecting", the words "proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming" shall be substituted.

Amendment
of section 3.

4. In section 4 of the principal Act, the words "which may extend to five lakh rupees" shall be omitted.

Amendment
of section 4.

5. In section 5 of the principal Act, for sub-section (I), the following sub-section shall be substituted, namely:—

Amendment
of section 5.

"(I) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act."

6. In section 8 of the principal Act,—

Amendment
of section 8.

(i) in sub-section (I), after the words and figure "section 5, or, seized", the words "or frozen" shall be inserted;

(ii) in sub-section (3),—

(a) in the opening portion, for the words and figures “record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property”, the words and figures “record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property” shall be substituted;

(b) in clause (a), for the words “scheduled offence before a court; and”, the words “offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and” shall be substituted;

(c) for clause (b), the following clause shall be substituted, namely:—

“(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority”;

(iii) in sub-section (4), for the words “possession of the attached property”, the following shall be substituted, namely:—

“possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.”;

(iv) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

“(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.”.

Amendment
of section 9.

7. In section 9 of the principal Act,—

(i) in the opening portion, for the words, brackets and figures “sub-section (6) of section 8”, the words, brackets, figures and letter “sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60” shall be substituted;

(ii) in the first proviso,—

(a) for the words “Adjudicating Authority”, the words “Special Court or the Adjudicating Authority, as the case may be,” shall be substituted;

(b) after the words “or seized”, the words “or frozen” shall be inserted.

8. In section 10 of the principal Act, in sub-section (2), for the words, brackets and figures "sub-section (6) of section 8", the words, brackets, figures and letters "sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60" shall be substituted.

Amendment
of section 10.

9. For section 12 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 12.

"12. (1) Every reporting entity shall—

Reporting
entity to
maintain
records.

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter."

10. After section 12 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
12A.

"12A. (1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.

Access to
information.

(2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.

(3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential."

11. In section 13 of the principal Act,—

Amendment
of section 13.

(i) in sub-section (1), for the words, brackets and figures "call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit", the words "make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting

entity, under this Chapter" shall be substituted;

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

"(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

(1B) The expenses of, and incidental to, any audit under sub-section (1A) shall be borne by the Central Government.";

(iii) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

(a) issue a warning in writing; or

(b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or

(c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or

(d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.";

(iv) after sub-section (3), the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purpose of this section, "accountant" shall mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949.".

38 of 1949.

Substitution of new section for section 14.

12. For section 14 of the principal Act, the following section shall be substituted, namely:—

No civil or criminal proceedings against reporting entity, its directors and employees in certain cases.

"14. Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12."

Substitution of new section for section 15.

13. For section 15 of the principal Act, the following section shall be substituted, namely:—

Procedure and manner of furnishing information by reporting entities.

"15. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act."

Amendment of section 17.

14. In section 17 of the principal Act,—

(i) in sub-section (1),—

(a) in clause (iii), after the word "money-laundering," the word "or" shall be inserted;

(b) after clause (iii), the following clause shall be inserted, namely:—

“(iv) is in possession of any property related to crime.”;

(c) in clause (d), after the words “such record or”, the words “property, if required or” shall be inserted;

(d) for the proviso, the following proviso shall be substituted, namely:—

“Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.”;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.”;

(iii) in sub-section (2), after the words, “immediately after search and seizure” the words “or upon issuance of a freezing order” shall be inserted;

(iv) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.”.

15. In section 18 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

Amendment
of section 18.

“Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.”;

Substitution of
new sections
for section 20
and section 21.

16. For sections 20 and 21 of the principal Act, the following sections shall be substituted, namely:—

Retention of
property.

“20. (1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.

(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, the Court or the Adjudicating Authority, as the case may be, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.

(6) Where an order releasing the property has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

Retention of
records.

21. (1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (5) or sub-section (7) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Where an order releasing the records has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any other officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act."

17. In section 22 of the principal Act, in sub-section (1), after the words "a survey or a search," the words "or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force," shall be inserted.

Amendment
of section 22.

18. In section 23 of the principal Act, for the words and figure "under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority", the words and figure "under section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court" shall be substituted.

Amendment
of section 23.

19. For section 24 of the principal Act, the following section shall be substituted, namely:—

Amendment
of section 24.

"24. In any proceeding relating to proceeds of crime under this Act,—

Burden of
Proof.

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering."

20. In section 26 of the principal Act, in sub-section (2), for the words "banking company, financial institution or intermediary", the words "reporting entity" shall be substituted.

Amendment
of section 26.

21. In section 44 of the principal Act, in sub-section (1),—

Amendment
of section 44.

(i) for clause (a) the following clause shall be substituted, namely:—

"(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or";

(ii) in clause (b), for the words "cognizance of the offence for which the accused is committed to it for trial", the words and figure "cognizance of offence under section 3, without the accused being committed to it for trial" shall be substituted;

(iii) after clause (b), the following clauses shall be inserted, namely:—

"(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the

offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.”

2 of 1974.

Amendment
of section 50.

22. In section 50 of the principal Act, in sub-section (1), in clause (b), for the words “banking company or a financial institution or a company,” the words “reporting entity” shall be substituted.

Amendment
of section 54.

23. In section 54 of the principal Act,—

(i) in the opening portion, for the word “officers”, the words “officers and others” shall be substituted;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) members of the recognised stock exchange referred to in clause (f) of section 2 and the officers of the stock exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(iii) after clause (h), the following clauses shall be inserted, namely:—

“(ha) officers of the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999;

41 of 1999.

(hb) officers of the Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952;

74 of 1952.

(hc) officers and members of the recognised association recognised under section 6 of the Forward Contracts (Regulation) Act, 1952;

74 of 1952.

(hd) officers of the Pension Fund Regulatory and Development Authority;

(he) officers of the Department of Posts in the Government of India;

(hf) Registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908;

16 of 1908.

(hg) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988;

59 of 1988.

(hh) officers and members of the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949;

38 of 1949.

(hi) officers and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959;

23 of 1959.

(hj) officers and members of the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980;”;

56 of 1980.

(iv) in clause (j), for the words “banking companies”, the words “reporting entities” shall be substituted.

24. After section 58, the following sections shall be inserted, namely:—

Insertion of
new sections
58A and 58B.

“58A. Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court may, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.

Special Court
to release the
property.

58B. Where the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering.”

Letter of
request of a
contracting
State or
authority for
confiscation
or release the
property.

25. In section 60 of the principal Act,—

Amendment
of section 60.

(i) in sub-section (1), for the words and figures “property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8”, the words, figures, brackets and letter “property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub section (6) of section 8” shall be substituted;

(ii) in sub-section (2),—

(a) for the words “attachment or confiscation”, the words “attachment, seizure, freezing or confiscation” shall be substituted;

(b) for the word and figure “section 3”, the words “a corresponding law” shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.”

26. In section 63 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment
of section 63.

“(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.”

Substitution
of new
section for
section 69.

27. For section 69 of the principal Act, the following section shall be substituted, namely:—

Recovery of
fine or
penalty.

“69. Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.”

43 of 1961.

Amendment
of section 70.

28. In section 70 of the principal Act, the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

“*Explanation 2.*—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.”

Amendment
of section 73.

29. In section 73 of the principal Act, in sub-section (2),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) the manner of provisional attachment of property under sub-section (1) of section 5;”;

(ii) after clause (e), the following clause shall be inserted, namely:—

“(ee) the manner of seizing or taking possession of property attached under section 5 or frozen under sub-section (1A) of section 17 or under sub-section (4) of section 8;”;

(iii) clause (h) shall be omitted;

(iv) in clause (i), for the words “the time within which”, the words “the nature and value of transactions and the time within which” shall be substituted;

(v) for clause (j), the following clauses shall be substituted, namely:—

“(j) the manner and the conditions in which identity of clients shall be verified by the reporting entities under clause (c) of sub-section (1) of section 12;

“(jj) the manner of identifying beneficial owner, if any, from the clients by the reporting entities under clause (d) of sub-section (1) of section 12;

“(jjj) the period of interval in which the reports are sent by the reporting entities or any of its employees under clause (c) of sub-section (2) of section 13;”;

(vi) after clause (p), the following clause shall be inserted, namely:—

“(pp) the manner in which the forwarding of the order for retention or continuation of freezing of the property and the period of keeping such order and material under sub-section (2) of section 20;”.

30. In the Schedule to the principal Act,—

(i) for Part A, the following Part shall be substituted, namely:—

Amendment
of the
Schedule.

“PART A

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

(45 of 1860)

Section	Description of offence
120B	Criminal conspiracy.
121	Waging or attempting to wage war or abetting waging of war, against the Government of India.
121A	Conspiracy to commit offences punishable by section 121 against the State.
255	Counterfeiting Government stamp.
257	Making or selling instrument for counterfeiting Government stamp.
258	Sale of counterfeit Government stamp.
259	Having possession of counterfeit Government stamp.
260	Using as genuine a Government stamp known to be counterfeit.
302	Murder.
304	Punishment for culpable homicide not amounting to murder.
307	Attempt to murder.
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or to constrain to an illegal act.
329	Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
411	Dishonestly receiving stolen property.
412	Dishonestly receiving property stolen in the commission of a dacoity.
413	Habitually dealing in stolen property.
414	Assisting in concealment of stolen property.
417	Punishment for cheating.
418	Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
419	Punishment for cheating by personation.
420	Cheating and dishonestly inducing delivery of property.
421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

Section	Description of offence
422	Dishonestly or fraudulently preventing debt being available for creditors.
423	Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
424	Dishonest or fraudulent removal or concealment of property.
467	Forgery of valuable security, will, etc.
471	Using as genuine a forged document or electronic record.
472 and 473	Making or possessing counterfeit seal, etc., with intent to commit forgery.
475 and 476	Counterfeiting device or mark.
481	Using a false property mark.
482	Punishment for using a false property mark.
483	Counterfeiting a property mark used by another.
484	Counterfeiting a mark used by a public servant.
485	Making or possession of any instrument for counterfeiting a property mark.
486	Selling goods marked with a counterfeit property mark.
487	Making a false mark upon any receptacle containing goods.
488	Punishment for making use of any such false mark.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.

PARAGRAPH 2

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
ACT, 1985

(61 OF 1985)

Section	Description of offence
15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.
18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.
20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Section	Description of offence
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy.

PARAGRAPH 3

OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

(6 OF 1908)

Section	Description of offence
3	Causing explosion likely to endanger life or property.
4	Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
5	Making or possessing explosives under suspicious circumstances.

PARAGRAPH 4

OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

(37 OF 1967)

Section	Description of offence
10 read with section 3	Penalty for being member of an unlawful association, etc.
11 read with section 3	Penalty for dealing with funds of an unlawful association.
13 read with section 3	Punishment for unlawful activities.
16 read with section 15	Punishment for terrorist act.
16A	Punishment for making demands of radioactive substances, nuclear devices, etc.
17	Punishment for raising fund for terrorist act.
18	Punishment for conspiracy, etc.
18A	Punishment for organising of terrorist camps.
18B	Punishment for recruiting of any person or persons for terrorist act.
19	Punishment for harbouring, etc.
20	Punishment for being member of terrorist gang or organisation.
21	Punishment for holding proceeds of terrorism.
38	Offence relating to membership of a terrorist organisation.
39	Offence relating to support given to a terrorist organisation.
40	Offence of raising fund for a terrorist organisation.

PARAGRAPH 5

OFFENCES UNDER THE ARMS ACT, 1959

(54 OF 1959)

Section	Description of offence
25	<p>To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition to contravention of section 5 of the Arms Act, 1959.</p> <p>To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.</p> <p>Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.</p> <p>Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.</p> <p>Other offences specified in section 25.</p>
26	<p>To do any act in contravention of any provisions of section 3, 4, 10 or section 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.</p> <p>To do any act in contravention of any provisions of section 5, 6, 7 or section 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.</p> <p>Other offences specified in section 26.</p>
27	Use of arms or ammunition in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.
28	Use and possession of fire arms or imitation fire arms in certain cases.
29	Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.
30	Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.

PARAGRAPH 6

OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972

(53 OF 1972)

Section	Description of offence
51 read with section 9	Hunting of wild animals.
51 read with section 17A	Contravention of provisions of section 17A relating to prohibition of picking, uprooting, etc., of specified plants.

Section	Description of offence
51 read with section 39	Contravention of provisions of section 39 relating to wild animals, etc., to be Government property.
51 read with section 44	Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited.
51 read with section 48	Contravention of provisions of section 48 relating to purchase of animal, etc., by licensee.
51 read with section 49B	Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animals articles, etc., derived from scheduled animals.

PARAGRAPH 7

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

(104 OF 1956)

Section	Description of offence
5	Procuring, inducing or taking person for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.
8	Seducing or soliciting for purpose of prostitution.
9	Seduction of a person in custody.

PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Section	Description of offence
7	Public servant taking gratification other than legal remuneration in respect of an official act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
13	Criminal misconduct by a public servant.

PARAGRAPH 9

OFFENCES UNDER THE EXPLOSIVES ACT, 1884

(4 OF 1884)

Section	Description of offence
9B	Punishment for certain offences.
9C	Offences by companies.

PARAGRAPH 10

OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972

(52 OF 1972)

Section	Description of offence
25 read with section 3	Contravention of export trade in antiquities and art treasures.
28	Offences by companies.

PARAGRAPH 11

OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

Section	Description of offence
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial.
24	Acquisition of securities or control.

PARAGRAPH 12

OFFENCES UNDER THE CUSTOMS ACT, 1962

(52 OF 1962)

Section	Description of offence
135	Evasion of duty or prohibitions.

PARAGRAPH 13

OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

(19 OF 1976)

Section	Description of offence
16	Punishment for enforcement of bonded labour.
18	Punishment for extracting bonded labour under the bonded labour system.
20	Abetment to be an offence.

PARAGRAPH 14

OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

(61 OF 1986)

Section	Description of offence
14	Punishment for employment of any child to work in contravention of the provisions of section 3.

PARAGRAPH 15

OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

(42 OF 1994)

Section	Description of offence
18	Punishment for removal of human organ without authority.
19	Punishment for commercial dealings in human organs.
20	Punishment for contravention of any other provisions of this Act.

PARAGRAPH 16

OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

(56 OF 2000)

Section	Description of offence
23	Punishment for cruelty to juvenile or child.
24	Employment of juvenile or child for begging.
25	Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.
26	Exploitation of juvenile or child employee.

PARAGRAPH 17

OFFENCES UNDER THE EMIGRATION ACT, 1983

(31 OF 1983)

Section	Description of offence
24	Offences and penalties.

PARAGRAPH 18

OFFENCES UNDER THE PASSPORTS ACT, 1967

(15 OF 1967)

Section	Description of offence
12	Offences and penalties.

PARAGRAPH 19

OFFENCES UNDER THE FOREIGNERS ACT, 1946

(31 OF 1946)

Section	Description of offence
14	Penalty for contravention of provisions of the Act, etc.
14B	Penalty for using forged passport.
14C	Penalty for abetment.

PARAGRAPH 20

OFFENCES UNDER THE COPYRIGHT ACT, 1957

(14 OF 1957)

Section	Description of offence
63	Offence of infringement of copyright or other rights conferred by this Act.
63A	Enhanced penalty on second and subsequent convictions.
63B	Knowing use of infringing copy of computer programme.
68A	Penalty for contravention of section 52A.

PARAGRAPH 21

OFFENCES UNDER THE TRADE MARKS ACT, 1999

(47 OF 1999)

Section	Description of offence
103	Penalty for applying false trade marks, trade descriptions, etc.
104	Penalty for selling goods or providing services to which false trade mark or false trade description is applied.
105	Enhanced penalty on second or subsequent conviction.
107	Penalty for falsely representing a trade mark as registered.
120	Punishment of abetment in India of acts done out of India.

PARAGRAPH 22

OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

(21 OF 2000)

Section	Description of offence
72	Penalty for breach of confidentiality and privacy.
75	Act to apply for offence or contravention committed outside India.

PARAGRAPH 23

OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002

(18 OF 2003)

Section	Description of offence
55 read with section 6.	Penalties for contravention of section 6, etc.

PARAGRAPH 24

OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

(53 OF 2001)

Section	Description of offence
70 read with section 68	Penalty for applying false denomination, etc.
71 read with section 68	Penalty for selling varieties to which false denomination is applied.
72 read with section 68	Penalty for falsely representing a variety as registered.
73 read with section 68	Penalty for subsequent offence.

PARAGRAPH 25

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986

(29 OF 1986)

Section	Description of offence
15 read with section 7	Penalty for discharging environmental pollutants, etc., in excess of prescribed standards.
15 read with section 8	Penalty for handling hazardous substances without complying with procedural safeguards.

PARAGRAPH 26

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

(6 OF 1974)

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 27

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

(14 OF 1981)

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant.

PARAGRAPH 28

OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME
NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF
Act, 2002

(69 OF 2002)

Section	Description of offence
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.”;

(ii) in Part B, paragraphs 1 to 25 shall be omitted;

(iii) in Part C, serial number (2) and the entries relating thereto shall be omitted.

Sd/-

P.K.Malhotra,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

C. J. Gothi,

Secretary to Government.



સત્યમેવ જયતે

The Gujarat Government Gazette

EXTRAORDINARY PUBLISHED BY AUTHORITY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 17th August, 2013.

No. RPB/44-2013/Act.-13-13/E:- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 4th January, 2013, Pausa 14, 1934 (Sake)The following Act of Parliament has received the assent of the President on the 3rd January, 2013, is hereby published for general information:-

THE UNLAWFUL ACTIVITIES (PREVENTION)

AMENDMENT ACT, 2012

AN

ACT

(Act No. 3 of 2013)

[3rd January, 2013]*further to amend the Unlawful Activities (Prevention) Act, 1967.*

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Unlawful Activities (Prevention) Amendment Act, 2012.

Short title.
com
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

37 of 1967:

2. In section 2 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the principal Act),—

Amendment
of section 2.

(1) clause (ea) shall be renumbered as clause (eb) and before clause (eb) as so renumbered, the following clause shall be inserted, namely:—

'(ea) "economic security" includes financial, monetary and fiscal stability, security of means of production and distribution, food security, livelihood security, energy security, ecological and environmental security;'; (ii) after clause (eb) as so renumbered, the following clause shall be inserted, namely:—

'(ec) "person" includes—

(1) an individual,

(ii) a company,

(iii) a firm,

(iv) an organisation or an association of persons or a body of individuals, whether incorporated or not,

(v) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vi) any agency, office or branch owned or controlled by any person falling within any of the preceding sub-clauses;";

(iii) for clause (g), the following clause shall be substituted, namely:—

“(g) “proceeds of terrorism” means,—

(i) all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found; or

(ii) any property which is being used, or is intended to be used, for a terrorist act or for the purpose of an individual terrorist or a terrorist gang or a terrorist organisation.

Explanation.—For the purposes of this Act, it is hereby declared that the expression “proceeds of terrorism” includes any property intended to be used for terrorism;”;

(iv) in clause (h), for the words “instruments in any form including”, the words “instruments in any form including but not limited to” shall be substituted.

Amendment
of section 6.

3. In section 6 of the principal Act, in sub-section (1), for the words “two years”, the words “five years” shall be substituted.

Amendment
of section 15.

4. Section 15 of the principal Act shall be renumbered as sub-section (1) thereof and in sub-section (1) as so renumbered,—

(i) in the opening portion, after the word “security”, the words “, economic security,” shall be inserted;

(ii) in clause (a), after sub-clause (iii), the following sub-clause shall be inserted, namely:—

“(iiiā) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or”;

(iii) in clause (c), for the words “any other person to do or abstain from doing any act;”, the words “an international or inter-governmental organisation or any other person to do or abstain from doing any act; or” shall be substituted;

(iv) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

“*Explanation.*—For the purpose of this sub-section,—

(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.;

(v) after sub-section (1), the following sub-section shall be inserted, namely:—

"(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule."

5. Section 16A of the principal Act shall be omitted.

Omission of section 16A.

6. For section 17 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 17.

"17. Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for raising funds for terrorist act.

Explanation.—For the purpose of this section,—

(a) participating, organising or directing in any of the acts stated therein shall constitute an offence;

(b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and

(c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under section 15 shall also be construed as an offence."

7. After section 22 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 22A, 22B and 22C.

"22A. (1) Where an offence under this Act has been committed by a company, every person (including promoters of the company) who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person (including promoters) liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised reasonable care to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any promoter, director, manager, secretary or other officer of the company, such promoter, director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Offences by societies or trusts.

22B. (1) Where an offence under this Act has been committed by a society or trust, every person (including the promoter of society or settlor of the trust) who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised reasonable care to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any promoter, director, manager, secretary, trustee or other officer of the society or trust, such promoter, director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section,—

(a) “society” means any body corporate registered under the Societies Registration Act, 1860 or any other State Act governing the registration of societies; 21 of 1860.

(b) “trust” means any body registered under the Indian Trusts Act, 1882 or any other State Act governing the registration of trusts; 2 of 1882.

(c) “director”, in relation to a society or trust, means a member of its governing board other than an *ex officio* member representing the interests of the Central or State Government or the appropriate statutory authority.

Punishment for offences by companies, societies or trusts.

22C. Where any offence under the Act has been committed by a company or a society or a trust, as the case may be, every person (including promoter of company or trust or settlor of the trust) who at the time of the offence was either in charge or responsible for the conduct of the business shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable with fine which shall not be less than five crore rupees and which may extend to ten crore rupees.

Amendment of section 23.

8. In section 23 of the principal Act, in sub-section (1), for the words “chemical substance of warfare, he shall”, the words “chemical substance of warfare or high quality counterfeit Indian currency, he shall” shall be substituted.

Amendment of heading of Chapter V.

9. In CHAPTER V of the principal Act, in the heading thereof, after the word “TERRORISM”, the words “OR ANY PROPERTY INTENDED TO BE USED FOR TERRORISM” shall be inserted.

Substitution of new sections for section 24.

10. For section 24 of the principal Act, the following sections shall be substituted, namely:—

Reference to proceeds of terrorism to include any property intended to be used for terrorism.

‘24. In this Chapter, unless the context otherwise requires, all references to “proceeds of terrorism” shall include any property intended to be used for terrorism.

24A. (1) No person shall hold or be in possession of any proceeds of terrorism.

Forfeiture of
proceeds of
terrorism.

(2) Proceeds of terrorism, whether held by a terrorist organisation or terrorist gang or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

(3) Where proceedings have been commenced under this section, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to, or, the value of the proceeds of terrorism involved in the offence.

11. In section 33 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:—

Amendment
of section 33.

“(3) Where any person is accused of an offence concerning high quality counterfeit Indian currency, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to the value of such high quality counterfeit Indian currency involved in the offence including the face value of such currency which are not defined to be of high quality, but are part of the common seizure along with the high quality counterfeit Indian currency.

(4) Where a person is accused of an offence punishable under Chapter IV or Chapter VI, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to or the value of the proceeds of terrorism involved in the offence.

(5) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the property, movable or immovable or both, belonging to him shall, where the trial under the Act cannot be concluded on account of the death of the accused or being declared a proclaimed offender or for any other reason, be confiscated on the basis of material evidence produced before the court.”

12. In section 35 of the principal Act,—

Amendment
of section 35.

(a) in sub-section (1),—

(i) for the word “order”, the word “notification” shall be substituted;

(ii) for the word “Schedule”, wherever it occurs, the words “First Schedule” shall be substituted;

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(4) The Central Government may, by notification in the Official Gazette, add to or remove or amend the Second Schedule or Third Schedule and thereupon the Second Schedule or the Third Schedule, as the case may be, shall be deemed to have been amended accordingly.

(5) Every notification issued under sub-section (1) or sub-section (4) shall, as soon as may be after it is issued, be laid before Parliament.”

13. In section 40 of the principal Act, in sub-section (1), for *Explanation*, the following *Explanation* shall be substituted, namely:—

Amendment
of section 40.

“*Explanation*.—For the purposes of this sub-section, a reference to provide money or other property includes—

(a) of its being given, lent or otherwise made available, whether or not for consideration; or

(b) raising, collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency.”

Amendment
of Schedule

14. In the principal Act, the existing Schedule shall be renumbered as the First Schedule thereof, and after the First Schedule as so renumbered, the following Schedules shall be inserted, namely:—

THE SECOND SCHEDULE

[See section 15(2)]

- (i) Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
- (ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
- (iii) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973);
- (iv) International Convention against the Taking of Hostages (1979);
- (v) Convention on the Physical Protection of Nuclear Material (1980);
- (vi) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988);
- (vii) Convention for the Suppression of Unlawful Acts against the safety of Maritime Navigation (1988);
- (viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988); and
- (ix) International Convention for the Suppression of Terrorist Bombings (1997).

THE THIRD SCHEDULE

[See clause (b) of Explanation to section 15(I)]

Security features to define high quality counterfeit Indian currency notes

- (a) water mark;
- (b) latent image; and
- (c) see through registration in the currency notes."

Sd/-

P.K. Malhotra,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. Gothi,

Secretary to Government,



सत्यमेव जयते



The Gujarat Government Gazette

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar,

Dated the 17th August, 2013.

No. RPB/38-2013/Act.-4-13-/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 7th January, 2013/Pausa 17, 1934(Sake)

The following Act of Parliament has received the assent of the President on the 5th January, 2013 is hereby published for general information :-

THE BANKING LAWS (AMENDMENT) ACT 2012.

(Act No. 4 of 2013)

[5th January, 2013]

AN ACT

further amend Banking Regulation Act, 1949, the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act 1980 and to make consequential amendments in certain other enactments.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows :-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Banking Laws (Amendment) Act, 2012.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Short title and
commence-
ment.

CHAPTER II

AMENDMENTS TO THE BANKING REGULATION ACT, 1949

Amendment of
section 5.

2. In section 5 of the Banking Regulation Act, 1949 (hereafter in this Chapter referred to as the principal Act), for clause (a), the following clause shall be substituted, namely:—

10 of 1949.

“(a) “approved securities” means the securities issued by the Central Government or any State Government or such other securities as may be specified by the Reserve Bank from time to time;”

Amendment of
section 12.

3. In section 12 of the principal Act,—

(A) in sub-section (1) —

(i) for clause (ii), the following clause shall be substituted, namely:—

“(ii) that, notwithstanding anything contained in the Companies Act, 1956, the capital of such banking company consists of—

1 of 1956.

(a) equity shares only; or

(b) equity shares and preference shares:

Provided that the issue of preference share shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares (whether perpetual or irredeemable or redeemable), and the terms and conditions subject to which each class of preference shares may be issued:

Provided further that no holder of the preference share, issued by the company, shall be entitled to exercise the voting right specified in clause (b) of sub-section (2) of section 87 of the Companies Act, 1956;”;

1 of 1956.

(ii) the proviso shall be omitted;

(B) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that the Reserve Bank may increase, in a phased manner, such ceiling on voting rights from ten per cent. to twenty-six per cent.”.

Insertion of
new section
12B.

4. After section 12A of the principal Act, the following section shall be inserted, namely:—

Regulation of
acquisition of
shares or
voting rights.

“12B. (1) No person (hereinafter referred to as “the applicant”) shall, except with the previous approval of the Reserve Bank, on an application being made, acquire or agree to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights, if any, held by him or his relative or associate enterprise or person acting in concert with him, makes the applicant to hold five per cent. or more of the paid-up share capital of such banking company or entitles him to exercise five per cent. or more of the voting rights in such banking company.

Explanation 1.—For the purposes of this sub-section,—

(a) “associate enterprise” means a company, whether incorporated or not; which,—

(i) is a holding company or a subsidiary company of the applicant;

or

(ii) is a joint venture of the applicant; or

(iii) controls the composition of the Board of Directors or other body governing the applicant; or

(iv) exercises, in the opinion of the Reserve Bank, significant influence on the applicant in taking financial or policy decisions; or

(v) is able to obtain economic benefits from the activities of the applicant;

(b) "relative" shall have the meaning assigned to it in section 6 of the Companies Act, 1956;

(c) persons shall be deemed to be "acting in concert" who, for a common objective or purpose of acquisition of shares or voting rights in excess of the percentage mentioned in this sub-section, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the banking company.

Explanation 2.—For the purposes of this Act, joint venture means a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks.

(2) An approval under sub-section (1) may be granted by the Reserve Bank if it is satisfied that—

(a) in the public interest; or

(b) in the interest of banking policy; or

(c) to prevent the affairs of any banking company being conducted in a manner detrimental or prejudicial to the interests of the banking company; or

(d) in view of the emerging trends in banking and international best practices;

or

(e) in the interest of the banking and financial system in India,

the applicant is a fit and proper person to acquire shares or voting rights:

Provided that the Reserve Bank may call for such information from the applicant as it may deem necessary for considering the application referred to in sub-section (1):

Provided further that the Reserve Bank may specify different criteria for acquisition of shares or voting rights in different percentages.

(3) Where the acquisition is by way of transfer of shares of a banking company and the Reserve Bank is satisfied that such transfer should not be permitted, it may, by order, direct that no such share shall be transferred to the proposed transferee and may further direct the banking company not to give effect to the transfer of shares and in case the transfer has been registered, the transferee shall not be entitled to exercise voting rights on poll in any of the meetings of the banking company.

(4) The approval for acquisition of shares may be subject to such conditions as the Reserve Bank may deem fit to impose, including a condition that any further acquisition of shares shall require prior approval of the Reserve Bank and that the applicant continues to be a fit and proper person to hold the shares or voting rights.

(5) Before issuing or allotting any share to any person or registering the transfer of shares in the name of any person, the banking company shall ensure that the

requirements of sub-section (1) are complied with by that person and where the acquisition is with the approval of the Reserve Bank, the banking company shall further ensure that the conditions imposed under sub-section (4), if any, of such approval are fulfilled.

(6) The decision of the Reserve Bank on the application made under sub-section (1) shall be taken within a period of ninety days from the date of receipt of the application by the Reserve Bank:

Provided that in computing the period of ninety days, the period taken by the applicant for furnishing the information called for by the Reserve Bank shall be excluded.

(7) The Reserve Bank may specify the minimum percentage of shares to be acquired in a banking company if it considers that the purpose for which the shares are proposed to be acquired by the applicant warrants such minimum shareholding.

(8) The Reserve Bank may, if it is satisfied that any person or persons acting in concert with him holding shares or voting rights in excess of five per cent. of the total voting rights of all the shareholders of the banking company, are not fit and proper to hold such shares or voting rights, pass an order directing that such person or persons acting in concert with him shall not, in the aggregate, exercise voting rights on poll in excess of five per cent. of the total voting rights of all the shareholders of the banking company:

Provided that the Reserve Bank shall not pass any such order without giving an opportunity of being heard to such person or persons acting in concert with him.

Amendment
of section 13.

5. In section 13 of the principal Act,—

(i) for the words “paid-up value of the said shares” occurring at the end, the words “price at which the said shares are issued” shall be substituted;

(ii) the following *Explanation* shall be inserted, namely:—

‘*Explanation.*—For the removal of doubts, it is hereby declared that the expression “price at which the said shares are issued” shall include amount or value of premium on such shares.’

Amendment
of section 18.

6. In section 18 of the principal Act,—

(i) in sub-section (1),—

(a) for the words “shall maintain in India”, the words “shall maintain in India on a daily basis” shall be substituted;

(b) for the words “at least three per cent.”, the words “such per cent.” shall be substituted;

(c) after the words “second preceding fortnight”, the words “as the Reserve Bank may specify, by notification in the Official Gazette, from time to time, having regard to the needs of securing the monetary stability in the country” shall be inserted;

(d) in the *Explanation*, in clause (a), in sub-clause (ii), the words “or from the Development Bank” shall be omitted;

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) If the balance held by such banking company at the close of business on any day is below the minimum specified under sub-section (1),

such banking company shall, without prejudice to the provisions of any other law for the time being in force, be liable to pay to the Reserve Bank, in respect of that day, penal interest at a rate of three per cent. above the bank rate on the amount by which such balance falls short of the specified minimum, and if the shortfall continues further, the penal interest so charged shall be increased to a rate of five per cent. above the bank rate in respect of each subsequent day during which the default continues.

(1B) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting banking company, that such defaulting banking company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.

(1C) The Reserve Bank may, for such period and subject to such conditions as may be specified, grant to any banking company such exemptions from the provisions of this section as it thinks fit with reference to all or any of its offices or with reference to the whole or any part of its assets and liabilities."

7. In section 24 of the principal Act,—

Amendment of section 24.

(a) in sub-section (4), in clause (a), the words, brackets and letter "clause (a) of" shall be omitted;

(b) in sub-section (5), in clause (b), the words, brackets and letter "clause (a) of" shall be omitted;

(c) in sub-section (8), the words, brackets and letter "clause (a) of" shall be omitted.

8. After section 26 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 26A.

'26A. (1) The Reserve Bank shall establish a Fund to be called the "Depositor Education and Awareness Fund" (hereafter in this section referred to as the "Fund").

Establishment of Depositor Education and Awareness Fund.

(2) There shall be credited to the Fund the amount to the credit of any account in India with a banking company which has not been operated upon for a period of ten years or any deposit or any amount remaining unclaimed for more than ten years, within a period of three months from the expiry of the said period of ten years:

Provided that nothing contained in this sub-section shall prevent a depositor or any other claimant to claim his deposit or unclaimed amount or operate his account or deposit account from or with the banking company after the expiry of said period of ten years and such banking company shall be liable to repay such deposit or amount at such rate of interest as may be specified by the Reserve Bank in this behalf.

(3) Where the banking company has paid outstanding amount referred to in sub-section (2) or allowed operation of such account or deposit, such banking company may apply for refund of such amount in such manner as may be specified by the authority or committee referred to in sub-section (5).

(4) The Fund shall be utilised for promotion of depositors' interests and for such other purposes which may be necessary for the promotion of depositors' interests as may be specified by the Reserve Bank from time to time.

(5) The Reserve Bank shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Reserve Bank may appoint, to administer the Fund, and to maintain separate accounts and other relevant records in relation to the Fund in such forms as may be specified by the Reserve Bank.

(6) It shall be competent for the authority or committee appointed under sub-section (5) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.

Insertion of
new section
29A.

9. After section 29 of the principal Act, the following section shall be inserted, namely:—

Power in
respect of
associate
enterprises.

‘29A. (1) The Reserve Bank may, at any time, direct a banking company to annex to its financial statements or furnish to it separately, within such time and at such intervals as may be specified by the Reserve Bank, such statements and information relating to the business or affairs of any associate enterprise of the banking company as the Reserve Bank may consider necessary or expedient to obtain for the purpose of this Act.

(2) Notwithstanding anything to the contrary contained in the Companies Act, 1956, the Reserve Bank may, at any time, cause an inspection to be made of any associate enterprise of a banking company and its books of account jointly by one or more of its officers or employees or other persons along with the Board or authority regulating such associate enterprise.

(3) The provisions of sub-sections (2) and (3) of section 35 shall apply *mutatis mutandis* to the inspection under this section.

Explanation.—“associate enterprise” in relation to a banking company includes an enterprise which—

(i) is a holding company or a subsidiary company of the banking company; or

(ii) is a joint venture of the banking company; or

(iii) is a subsidiary company or a joint venture of the holding company of the banking company; or

(iv) controls the composition of the Board of directors or other body governing the banking company; or

(v) exercises, in the opinion of the Reserve Bank, significant influence on the banking company in taking financial or policy decisions; or

(vi) is able to obtain economic benefits from the activities of the banking company.

Insertion of
new Part
IIAB.

10. After Part IIA of the principal Act, the following Part shall be inserted, namely:—

“PART IIAB

SUPERSESSION OF BOARD OF DIRECTORS OF BANKING COMPANY

Supersession
of Board of
Directors in
certain cases.

36ACA. (1) Where the Reserve Bank is satisfied, in consultation with the Central Government, that in the public interest or for preventing the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or any banking company or for securing the proper management of any banking company, it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of such banking company for a period not exceeding six months as may be specified in the order:

Provided that the period of supersession of the Board of Directors may be extended from time to time, so, however, that the total period shall not exceed twelve months.

(2) The Reserve Bank may, on supersession of the Board of Directors of the banking company under sub-section (1) appoint in consultation with the Central Government for such period as it may determine, an Administrator (not being an officer of the Central Government or a State Government) who has experience in law, finance, banking, economics or accountancy.

(3) The Reserve Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

(4) Upon making the order of supersession of the Board of Directors of a banking company, notwithstanding anything contained in the Companies Act, 1956,—

1 of 1956.

(a) the chairman, managing director and other directors shall, as from the date of supersession, vacate their offices as such;

1 of 1956.

(b) all the powers, functions and duties which may, by or under the provisions of the Companies Act, 1956 or this Act, or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of Directors of such banking company, or by a resolution passed in general meeting of such banking company, shall, until the Board of Directors of such banking company is reconstituted, be exercised and discharged by the Administrator appointed by the Reserve Bank under sub-section (2):

Provided that the power exercised by the Administrator shall be valid notwithstanding that such power is exercisable by a resolution passed in the general meeting of such banking company.

(5) The Reserve Bank may constitute, in consultation with the Central Government, a committee of three or more persons who have experience in law, finance, banking, economics or accountancy to assist the Administrator in the discharge of his duties.

(6) The committee shall meet at such times and places and observe such rules of procedure as may be specified by the Reserve Bank.

(7) The salary and allowances to the Administrator and the members of the committee constituted under sub-section (5) by the Reserve Bank shall be such as may be specified by the Reserve Bank and be payable by the concerned banking company.

(8) On and before the expiration of two months before the expiry of the period of supersession of the Board of Directors as specified in the order issued under sub-section (1), the Administrator of the banking company, shall call the general meeting of the company to elect new directors and reconstitute its Board of Directors.

(9) Notwithstanding anything contained in any other law or in any contract, the memorandum or articles of association, no person shall be entitled to claim any compensation for the loss or termination of his office.

(10) The Administrator appointed under sub-section (2) shall vacate office immediately after the Board of Directors of such banking company has been reconstituted.”.

11. In section 46 of the principal Act,—

Amendment of
section 46.

(a) in sub-section (1), for the words “and shall also be liable to fine”, the words “or with fine, which may extend to one crore rupees or with both” shall be substituted;

(b) in sub-section (2),—

(i) for the words “two thousand rupees”, the words “twenty lakh rupees” shall be substituted;

(ii) for the words "one hundred rupees", the words "fifty thousand rupees" shall be substituted;

(c) in sub-section (4),—

(i) for the words "fifty thousand rupees", the words "one crore rupees" shall be substituted;

(ii) for the words "two thousand and five hundred rupees", the words "one lakh rupees" shall be substituted.

Amendment of
section 47A.

12. In section 47A of the principal Act, in sub-section (1),—

(a) in the opening portion, for the words, brackets and figures "sub-section (3) or sub-section (4)", the words, brackets and figures "sub-section (2) or sub-section (3) or sub-section (4)" shall be substituted;

(b) for sub-clauses (a) and (b), the following sub-clauses shall be substituted, namely:—

"(a) where the contravention or default is of the nature referred to in sub-section (2) of section 46, a penalty not exceeding twenty lakh rupees in respect of each offence and if the contravention or default persists, a further penalty not exceeding fifty thousand rupees for everyday, after the first day, during which the contravention or default continues;

(b) where the contravention is of the nature referred to in sub-section (3) of section 46, a penalty not exceeding twice the amount of the deposits in respect of which such contravention was made;

(c) where the contravention or default is of the nature referred to in sub-section (4) of section 46, a penalty not exceeding one crore rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where such contravention or default is a continuing one, a further penalty which may extend to one lakh rupees for everyday, after the first day, during which the contravention or default continues."

Amendment of
section 51.

13. In section 51 of the principal Act, in sub-section (1), before the words, brackets, figures and letters "sub-sections (1B), (1C) and (2) of sections 30", the figures and letter "29A," shall be inserted.

Amendment of
section 56.

14. In section 56 of the principal Act,—

(a) in clause (j) relating to substitution of section 18,—

(A) in sub-section (1),—

(i) for the words "State Co-operative Bank", the words "a co-operative bank" shall be substituted;

(ii) for the brackets and words '(hereinafter referred to as a "scheduled State co-operative bank")', the brackets and words '(hereinafter referred to as a "scheduled co-operative bank")' shall be substituted;

(iii) for the words "at least three per cent.", the words "such per cent." shall be substituted; and

(iv) after the words "second preceding fortnight", the words "as the Reserve Bank may specify, by notification in the Official Gazette, from time to time having regard to the needs for securing the monetary stability in the country" shall be inserted;

(B) in the *Explanation*,—

(i) in clause (a),—

(1) in sub-clause (ii), the words “the Development Bank” shall be omitted;

(2) in sub-clauses (iii) and (iv), for the words “State co-operative bank”, the words “Co-operative Bank” shall be substituted;

(ii) in clause (c), for the words “a corresponding new bank”, the words and letters “a corresponding new bank or IDBI Bank Ltd.” shall be substituted;

(C) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) If the balance held by co-operative bank referred to in sub-clause (ccf) of clause (c) of section 56 of the Banking Regulation Act, 1949, at the close of business on any day is below the minimum specified under sub-section (1), such co-operative bank shall, without prejudice to the provisions of any other law for the time being in force, be liable to pay to the Reserve Bank, in respect of that day, penal interest at a rate of three per cent. above the bank rate on the amount by which such balance falls short of the specified minimum, and if the shortfall continues further, the penal interest so charged shall be increased to a rate of five per cent. above the bank rate in respect of each subsequent day during which the default continues.

(1B) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting co-operative bank, that such defaulting co-operative bank had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.

(1C) The Reserve Bank may, for such period and subject to such conditions as may be specified, grant to any co-operative bank such exemptions from the provisions of this section as it thinks fit with reference to all or any of its officers or with reference to the whole or any part of its assets and liabilities.”;

(b) in clause (o) relating to the modification of section 22,—

(A) in sub-section (1),—

(i) clause (a) shall be omitted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that nothing in this sub-section shall apply to a primary credit society carrying on banking business on or before the commencement of the Banking Laws (Amendment) Act, 2012, for a period of one year or for such further period not exceeding three years, as the Reserve Bank may, after recording the reasons in writing for so doing, extend.”;

(B) in sub-section (2),—

(i) for the words “every primary credit society which becomes a primary co-operative bank after such commencement shall before the

expiry of three months from the date on which it so becomes a primary co-operative bank", the words, brackets and figures "every primary credit society which had become a primary co-operative bank on or before the commencement of the Banking Laws (Amendment) Act, 2012, shall before the expiry of three months from the date on which it had become a primary co-operative bank" shall be substituted;

(ii) the words "other than a primary credit society" shall be omitted;

(iii) in the proviso,—

(a) in clause (ii), for the words "thereafter, or", the word "thereafter," shall be substituted;

(b) clause (iii) shall be omitted;

(c) in clause (g) relating to modification of section 24,—

(a) sub-clause (i) shall be omitted;

(b) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) for sub-section (2A); the following sub-section shall be substituted, namely:—

“(2A) A scheduled co-operative bank, in addition to the average daily balance which it is, or may be, required to maintain under section 42 of the Reserve Bank of India Act, 1934 and every other co-operative bank, in addition to the cash reserve which it is required to maintain under section 18, shall maintain in India, assets, the value of which shall not be less than such percentage not exceeding forty per cent. of the total of its demand and time liabilities in India as on last Friday of the second preceding fortnight as the Reserve Bank may, by notification in the Official Gazette, specify from time to time and such assets shall be maintained in such form and manner, as may be specified in such notification.”;

2 of 1934.

(d) after clause (ri), the following clause shall be inserted, namely:—

“(ria) in section 26A, for the words “banking companies”, the words “co-operative bank” shall be substituted;”;

(e) in clause (s), in the opening portion, for the words and figures, “sections 29 and 30”, the word and figures “section 29” shall be substituted;

(f) after clause (s), the following clause shall be inserted, namely:—

“(sa) for section 30, the following section shall be substituted, namely:—

Audit.

“30. (1) Without prejudice to anything contained in any other law for the time being in force, where the Reserve Bank is satisfied that it is necessary in the public interest or in the interest of the co-operative bank or its depositors so to do, it may at any time by general or special order direct that an additional audit of the co-operative bank accounts, for any such transactions or class of transactions or for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order appoint a person duly qualified under any law for the time being in force to be an auditor

of companies to conduct such audit, and the auditor shall comply with such directions and make a report of such audit to the Reserve Bank and forward a copy thereof to the co-operative bank.

(2) The expenses of, or incidental to, the additional audit specified in the order made by the Reserve Bank shall be borne by the co-operative bank.

(3) The auditor referred to in sub-section (1) shall have such powers, exercise such functions vested in and discharge the duties and be subject to the liabilities and penalties imposed on auditors of companies by section 227 of the Companies Act, 1956 and also that of the auditors, if any, appointed by the law establishing, constituting or forming the co-operative bank to the extent the provisions of the Companies Act, 1956 are not inconsistent with the provisions of such law.

(4) In addition to the matters referred to in the order under sub-section (1) the auditor shall state in his report—

(a) whether or not the information and explanation required by him have been found to be satisfactory;

(b) whether or not the transactions of the co-operative bank which came to his notice have been within the powers of the co-operative bank;

(c) whether or not the returns received from branch offices of the co-operative bank have been found adequate for the purpose of his audit;

(d) whether the profit and loss accounts, shows a true balance or profit or loss for the period covered by such account;

(e) any other matter which he considers should be brought to the notice of the Reserve Bank and the shareholders of the co-operative bank.”

CHAPTER III

AMENDMENT TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1970

15. In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970—

Amendment of section 3.

(a) for sub-section (2A), the following sub-section shall be substituted, namely:—

“(2A) Subject to the provisions of this Act, the authorised capital of every corresponding new bank shall be three thousand crores of rupees divided into three hundred crores of fully paid-up shares of ten rupees each:

Provided that the corresponding new bank may reduce the nominal or face value of the shares, and divide the authorised capital into such denomination as it may decide with the prior approval of the Reserve Bank:

Provided further that the Central Government may in consultation with the Reserve Bank and by notification in the Official Gazette increase or

reduce the authorised capital as it deems fit so however that the shares in all cases shall be fully paid-up shares.”;

(b) in sub-section (2B), in clause (c), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(c) in sub-section (2BB), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(d) in sub-section (2BBA), in clause (a), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(e) in sub-section (2C), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(f) in sub-section (2E),—

(i) for the words “one per cent.”, the words “ten per cent.” shall be substituted;

(ii) in the second proviso, for the words “no preference shareholder shall be entitled to exercise voting rights in respect of preference shares held by him in excess of one per cent.”, the words “no preference shareholder, other than the Central Government, shall be entitled to exercise voting rights in respect of preference shares held by him in excess of ten per cent.” shall be substituted.

CHAPTER IV

AMENDMENT TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1980

Amendment of
section 3.

16. In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980,—

40 of 1980.

(a) for sub-section (2A), the following sub-section shall be substituted, namely:—

“(2A) Subject to the provisions of this Act, the authorised capital of every corresponding new bank shall be three thousand crores of rupees divided into three hundred crores of fully paid-up shares of ten rupees each:

Provided that the corresponding new bank may reduce the nominal or face value of the shares, and divide the authorised capital into such denomination as it may decide with the prior approval of the Reserve Bank:

Provided further that the Central Government may, in consultation with the Reserve Bank, and by notification in the Official Gazette increase or reduce the authorised capital as it deems fit so however that the shares in all cases shall be fully paid-up shares.”;

(b) in sub-section (2B), in clause (c), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(c) in sub-section (2BB), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(d) in sub-section (2BBA), in clause (a), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(e) in sub-section (2C), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(f) in sub-section (2E),—

(i) for the words "one per cent.", the words "ten per cent." shall be substituted;

(ii) in the second proviso, for the words "no preference shareholder shall be entitled to exercise voting rights in respect of preference shares held by him in excess of one per cent.", the words "no preference shareholder, other than the Central Government, shall be entitled to exercise voting rights in respect of preference shares held by him in excess of ten per cent." shall be substituted.

CHAPTER V

MISCELLANEOUS

17. The enactments specified in the Schedule are hereby amended to the extent and in the manner mentioned in the third column thereof.

Amendment
of certain
enactments.

THE SCHEDULE

(See section 17)

Sl. No.	Short Title	Amendment
1.	The Indian Contracts Act, 1872. (9 of 1872)	In section 28, after <i>Exception 2</i> , the following <i>Exception</i> shall be inserted, namely:—
	Saving of a guarantee agreement of a bank or a financial institution.	<p><i>Exception 3.</i>—This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.</p> <p><i>Explanation.</i>—</p> <p>(i) In <i>Exception 3</i>, the expression "bank" means—</p> <p>(a) a "banking company" as defined in clause (c) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.</p> <p>(b) "a corresponding new bank" as defined in clause (da) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.</p> <p>(c) "State Bank of India" constituted under section 3 of the State Bank of India Act, 1955; 23 of 1955.</p> <p>(d) "a subsidiary bank" as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959; 38 of 1959.</p> <p>(e) "a Regional Rural Bank" established under section 3 of the Regional Rural Banks Act, 1976; 21 of 1976.</p> <p>(f) "a Co-operative Bank" as defined in clause (cci) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.</p> <p>(g) "a multi-State co-operative bank" as defined in clause (cciiia) of section 5 of the Banking Regulation Act, 1949; and 10 of 1949.</p> <p>(ii) In <i>Exception 3</i>, the expression "a financial institution" means any public financial institution within the meaning of section 4A of the Companies Act, 1956. 1 of 1956.</p>

Sl. No.	Short Title	Amendment
2.	Indian Stamp Act, 1899. (2 of 1899).	After section 8D, the following section shall be inserted, namely:— 8E. Notwithstanding anything contained in this Act or any other law for the time being in force,— (a) conversion of a branch of a bank into a wholly owned subsidiary of the bank or transfer of shareholding of a bank to a holding company of the bank in terms of the scheme or guidelines of the Reserve Bank of India shall not be liable to duty under this Act or any other law for the time being in force; or (b) any instrument, including an instrument of, or relating to, transfer of any property, business, asset whether movable or immovable, contract, right, liability and obligation, for the purpose of, or in connection with, the conversion of a branch of a bank into a wholly owned subsidiary of the bank or transfer of shareholding of a bank to a holding company of the bank in terms of the scheme or guidelines issued by the Reserve Bank of India in this behalf, shall not be liable to duty under this Act or any other law for the time being in force.
		<i>Explanation.—</i> (i) For the purposes of this section, the expression "bank" means— (a) "a banking company" as defined in clause (c) of section 5 of the Banking Regulation Act, 1949; 10 of 1949. (b) "a corresponding new bank" as defined in clause (da) of section 5 of the Banking Regulation Act, 1949; 10 of 1949. (c) "State Bank of India" constituted under section 3 of the State Bank of India Act, 1955; 23 of 1955. (d) "a subsidiary bank" as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959; 38 of 1959. (e) "a Regional Rural Bank" established under section 3 of the Regional Rural Banks Act, 1976; 21 of 1976. (f) "a Co-operative Bank" as defined in clause (cci) of section 5 of the Banking Regulation Act, 1949; 10 of 1949. (g) "a multi-State co-operative bank" as defined in clause (cciii) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.

Sl. No.	Short Title	Amendment	
		(ii) For the purposes of this section, the expression the "Reserve Bank of India" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934.	2 of 1934.
3.	The Reserve Bank of India Act, 1934. (2 of 1934).	In section 8, in sub-section (4), for the words "thereafter until his successor shall have been nominated", the following shall be substituted, namely:— "shall be eligible for reappointment: Provided that any such Director shall not be appointed for more than two terms, that is, for a maximum period of eight years either continuously or intermittently".	
4.	The Reserve Bank of India Act, 1934 (2 of 1934).	In section 9, in sub-section (3), for the words "thereafter until his successor shall have been appointed and shall be eligible for reappointment", the following shall be substituted, namely:— "shall be eligible for reappointment: Provided that any such member shall not be appointed for more than two terms, that is, for a maximum period of eight years either continuously or intermittently".	
5.	The State Financial Corporation Act, 1951 (63 of 1951).	In section 7, in sub-section (3), the words and figures "and the Banking Regulation Act, 1949" shall be omitted.	10 of 1949.
6.	The State Bank of India Act, 1955 (23 of 1955).	In section 12, the words and figures "and the Banking Regulation Act, 1949" shall be omitted.	10 of 1949.
7.	The State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959).	In section 20, the words and figures "and the Banking Regulation Act, 1949" shall be omitted.	10 of 1949.
8.	The Warehousing Corporations Act, 1962 (58 of 1962).	In section 5, the words and figures "and the Banking Regulation Act, 1949" shall be omitted.	10 of 1949.
9.	The Regional Rural Banks Act, 1976 (21 of 1976).	In section 7, the words and figures "and shall also be deemed to be approved securities for the purposes of the Banking Regulation Act, 1949" shall be omitted.	10 of 1949.
10.	The Industrial Finance Corporation (Transfer of Undertaking and Repeal) Act, 1993 (23 of 1993).	In section 10, the words and figures "and the Banking Regulation Act, 1949" shall be omitted.	10 of 1949.

Sl. No.	Short Title	Amendment
11.	The Industrial Reconstruction Bank (Transfer of Undertakings and Repeal) Act, 1997 (7 of 1997).	In section 11, the words and figures "and the Banking Regulation Act, 1949" shall be omitted. 10 of 1949.
12.	The Unit Trust of India (Transfer of Undertakings and Repeal) Act, 2002 (58 of 2002).	In section 17, the words and figures "and the Banking Regulation Act, 1949" shall be omitted. 10 of 1949.

Sd/-

P.K.Malhotra,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

C. J. Gothi,

Secretary to Government,

Government Central Press, Gandhinagar.



सत्यमेव जयते

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 27th September, 2013.

No. RPB/9-2013/Ord.-09-2013/E:- 96 The following Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section 1. dated the 16th September, 2013 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 16th September, 2013/Bhadra 25, 1935 (Saka).

THE SECURITIES LAWS (AMENDMENT) SECOND ORDINANCE, 2013

No. 9 of 2013

Promulgated by the President in the Sixty-fourth Year of the Republic of India.

An Ordinance further to amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

WHEREAS the Securities Laws (Amendment) Ordinance, 2013 further to amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996 was promulgated by the President on the 18th July, 2013;

AND WHEREAS the Securities Laws (Amendment) Bill, 2013 with certain modifications was introduced in the House of the People to replace the said Ordinance but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

Short title and
commencement.

1. (1) This Ordinance may be called the Securities Laws (Amendment) Second Ordinance, 2013.

(2) Save as otherwise provided in this Ordinance, it shall be deemed to have come into force on the 18th day of July, 2013.

CHAPTER II

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

Amendment
of section 11.

2. In section 11 of the Securities and Exchange Board of India Act, 1992 (hereinafter in this Chapter referred to as the principal Act),—

15 of 1992.

(i) in sub-section (2),—

(a) for clause (ia), the following clause shall be substituted, namely:—

“(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;”;

(b) after clause (ia), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 6th day of March, 1998, namely:—

“(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;”;

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) The amount disgorged, pursuant to a direction issued, under section 11B or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Ordinance.”

42 of 1956.
22 of 1996.

Amendment
of section
11AA.

3. In section 11AA of the principal Act,—

(i) in sub-section (1)—

(a) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;

(b) the following proviso shall be inserted, namely:—

“Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.”;

(ii) in sub-section (2), in the opening portion, for the word "company", the word "person" shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.";

(iv) in sub-section (3),—

(a) after the word, brackets and figure "sub-section (2)", the words, brackets, figure and letter "or sub-section (2A)" shall be inserted;

(b) after clause (viii), the following clause shall be inserted, namely:—

"(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,".

4. In section 11B of the principal Act, the following *Explanation* shall be inserted, namely:—

Amendment of section 11B.

"*Explanation*.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention."

5. In section 11C of the principal Act,—

Amendment of section 11C.

(i) for sub-section (8), the following sub-section shall be substituted, namely:—

"(8) Where in the course of an investigation, the Investigating Authority has reason to believe that any person or enterprise, as the case may be, to whom a notice under sub-section (3) has been issued or might be issued,—

(a) has omitted or failed to provide the information or produce documents as required in the notice; or

(b) would not provide the information or produce documents which shall be useful for, or relevant to, the investigation; or

(c) would destroy, mutilate, alter, falsify or secrete the information or documents useful for, or relevant to, the investigation,

then, the Chairman may, after being satisfied that it is necessary to do so, authorise the Investigating Authority or any other officer of the Board (the officer so authorised in all cases being hereinafter referred to as the authorised officer), to—

(i) enter and search, with such assistance, as may be required, the building, place, vessel, vehicle or aircraft where such information or documents are expected or believed to be kept;

(ii) break open the lock of any door, box, locker, safe almirah or other receptacle for exercising the powers conferred by sub-clause (i), where the keys thereof are not available;

(iii) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account or other documents;

(iv) require any person who is found to be in possession or control of any books of account or other documents, maintained in the form of

electronic record, to provide the authorised officer the necessary facility to inspect such books of account or other documents.

Explanation—For the purposes of this sub-clause, the expression “electronic record” shall have the meaning assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000.

21 of 2000.

(v) seize any such books of account or other documents found as a result of such search;

(vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(vii) record on oath the statement of any person who is found to be in possession or in control of the information or documents referred to in sub-clause (i), (iii) and (iv).”;

(ii) for sub-section (9), the following sub-section shall be substituted, namely,—

“(9) The Board may make regulations in relation to any search or seizure under this section; and in particular, without prejudice to the generality of the foregoing power, such regulations may provide for the procedure to be followed by the authorised officer—

(a) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;

(b) for ensuring safe custody of any books of account or other documents or assets seized.”;

(iii) in sub-section (10), the words “and inform the Magistrate of such return” shall be omitted.

Insertion of
new section
15JB.

6. After section 15JA of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

Settlement of
administrative
and civil
proceedings.

“15JB. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceeding initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.

(3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.

(4) No appeal shall lie under section 15T against any order passed by the Board or Adjudicating officer, as the case may be, under this section.”

Amendment
of section 15T.

7. In section 15T of the principal Act, sub-section (2) shall be omitted.

Amendment of
section 26.

8. In section 26 of the principal Act, sub-section (2) shall be omitted.

9. After section 26 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 26A, 26B, 26C, 26D and 26E.

"26A. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

Establishment of Special Courts.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

2 of 1974.

26B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Second Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Offences triable by Special Courts.

2 of 1974.

26C. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Appeal and revision.

2 of 1974.

26D. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

Application of Code to proceedings before Special Court.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

2 of 1974.

26E. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Transitional provisions.

2 of 1974.

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this Section."

10. After section 28 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 28A.

"28A. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed

Recovery of amounts.

to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties;

and for this purpose, the provisions of sections 221 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961. 43 of 1961.

Explanation 1.—For the purpose of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.—Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate. 43 of 1961.

Explanation 3.—Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act. 43 of 1961.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.

(4) For the purpose of sub-section (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

11. In section 30 of the principal Act, in sub-section (2),—

(i) after clause (c), the following clauses shall be inserted, namely:—

“(ca) the utilisation of the amount credited under sub-section (5) of section 11;

(cb) the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA;

(cc) the procedure to be followed by the authorised officer for search or seizure under sub-section (9) of section 11C;”;

(ii) after clause (d), the following clauses shall be inserted, namely:—

“(da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;

(db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.”

12. After section 34 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 34A.

“34A. Any act or thing done or purporting to have been done under the principal Act, in respect of calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board and in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.”

Validation of certain acts.

CHAPTER III

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

42 of 1956.

13. In section 12A of the Securities Contracts (Regulation) Act, 1956 (hereafter in this Chapter referred to as ‘the principal’ Act), the following *Explanation* shall be inserted, namely:—

Amendment of section 12A.

“*Explanation.*—For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.”

14. After section 23J of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

Insertion of new section 23JA.

“23JA. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

Settlement of Administrative and Civil Proceedings.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.

15 of 1992.

(3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply.

15 of 1992.

(4) No appeal shall lie under section 23L against any order passed by the Board or the adjudicating officer, as the case may be under this section.”

15. After section 23JA of the principal Act as so inserted, the following section shall be inserted, namely:—

Insertion of new section 23JB.

“23JB. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under

Recovery of amounts.

section 12A or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 221 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961. 43 of 1961.

Explanation 1.—For the purpose of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.—Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate. 43 of 1961.

Explanation 3.—Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23L of this Act. 43 of 1961.

(2) The recovery officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 12A, shall have precedence over any other claim against such person.

(4) For the purposes of sub-section (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing to exercise the powers of a Recovery Officer.

16. In section 26 of the principal Act, sub-section (2) shall be omitted.

17. After section 26 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 26A, 26B, 26C, 26D and 26E.

"26A. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

Establishment of Special Courts.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

2 of 1974.

26B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Second Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Offences triable by Special Courts.

2 of 1974.

26C. The High Court may exercise, so far as may be applicable, all the power conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Appeal and Revision.

2 of 1974.

26D. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

Application of Code to proceedings before Special Court.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

2 of 1974.

26E. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Transitional provisions.

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section."

18. After section 31 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 32.

"32. Any act or thing done or purporting to have been done under the principal Act, in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times."

Validation of Certain acts.

CHAPTER IV

AMENDMENTS TO THE DEPOSITORIES ACT, 1996

Amendment of
section 19.

19. In section 19 of the Depositories Act, 1996 (hereafter in this chapter referred to as the principal Act in this chapter), the following Explanation shall be inserted, namely:— 22 of 1996.

“Explanation.—For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.”

Insertion of
new section
19-IA.

20. After section 19-I of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

Settlement of
Administrative
Civil
Proceedings.

“19-IA. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 19 or section 19H, as the case may be, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.

15. of 1992.

(3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply.

15. of 1992.

(4) No appeal shall lie under section 23A against any order passed by the Board or the adjudicating officer under this section.”

Insertion of
new section
19-IB.

21. After section 19-IA of the principal Act as so inserted, the following shall be inserted, namely:—

Recovery of
amounts.

‘19-IB (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 19 or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

(a) attachment and sale of the person’s movable property;

(b) attachment of the person’s bank accounts;

(c) attachment and sale of the person’s immovable property;

(d) arrest of the person and his detention in prison;

(e) appointing a receiver for the management of the person’s movable and immovable properties,

and for this purpose, the provisions of sections 221 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961. 43 of 1961.

Explanation 1.— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or sons' minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

43 of 1961.

Explanation 2.— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

43 of 1961.

Explanation 3.— Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23A of this Act.

(2) The recovery officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 19, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

22. In section 22 of the principal Act, sub-section (2) shall be omitted.

Amendment
of section 22.

23. After section 22B of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
22C, 22D,
22E, 22F and
22G.

"22C. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

Establishment
of Special
Courts.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

2 of 1974.

22D. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Second Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Offences
triable by
Special
Courts.

Appeal and
Revision.

22E. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court. 2 of 1974.

Application of
Code to
proceedings
before Special
Court.

22F. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973. 2 of 1974.

Transitional
provisions.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

22G. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973. 2 of 1974.

Amendment
of section
23A.

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section."

24. In section 23A of the principal Act, sub-section (2) shall be omitted.

Insertion of
new section
30A.

25. After section 30 of the principal Act, the following section shall be inserted, namely:-

Validation of
certain acts.

"30A. Any act or thing done or purporting to have been done under the principal Act, in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times."

Repeal and
saving.

26. (1) The Securities Laws (Amendment) Ordinance, 2013 is hereby repealed. Ord. 8 of 2013.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

Sd/-
PRANAB MUKHERJEE,
President.

Sd/-
P. K. MALHOTRA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat
Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 14th October, 2013.

No. RPB/10-2013/Ord.-10-2013/E:- The following Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27th September, 2013 is republished for general information :-

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 27th September, 2013/Asvina 5, 1935 (Saka).

THE READJUSTMENT OF REPRESENTATION OF SCHEDULED CASTES AND SCHEDULED TRIBES IN PARLIAMENTARY AND ASSEMBLY CONSTITUENCIES (THIRD) ORDINANCE, 2013

No. 10 OF 2013

Promulgated by the President in the Sixty-fourth Year of the Republic of India.

An Ordinance to provide for readjustment of seats in the House of the People and in the Legislative Assemblies of the States, and for the readjustment of territorial constituencies therefor, insofar as such readjustment is necessitated by inclusion in, or exclusion from, the lists of the Scheduled Castes and the Scheduled Tribes and for matters connected therewith or incidental thereto.

WHEREAS the Readjustment-of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Ordinance, 2013, to provide for the aforesaid matters, was promulgated by the President on the 30th January, 2013;

AND WHEREAS the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Bill, 2013 was introduced on the 26th February, 2013 in the Council of States to replace the said Ordinance;

AND WHEREAS the said Bill was referred by the Chairman of the Council of States to the Department-related Parliament Standing Committee on Personnel, Public Grievances, Law and Justice on the 18th March, 2013.

AND WHEREAS the said Standing Committee presented its Fifty-ninth Report to the Council of States on the 2nd May, 2013 recommending that the Bill may be passed;

AND WHEREAS the said Bill could not be passed by the Council of States and the said Ordinance ceased to operate on the 4th April, 2013;

AND WHEREAS the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Ordinance, 2013 was promulgated by the President on the 5th June, 2013;

AND WHEREAS the said Bill pending in the Council of States was withdrawn and the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Bill, 2013 was introduced on the 7th August, 2013 in the Council of States to replace the said Second Ordinance;

AND WHEREAS the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Bill, 2013 could not be passed by the Council of States;

AND WHEREAS the said Second Ordinance ceased to operate on the 15th September, 2013;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to validate the actions taken under the said Ordinance so ceased to operate and to take further action to provide for the aforesaid matters;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title
and
commencement

1. (1) This Ordinance may be called the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Third) Ordinance, 2013.

Definitions.

(2) It shall be deemed to have come into force on the 30th day of January, 2013.

2. In this Ordinance, unless the context otherwise requires,—

(a) "Census Commissioner" means the Census Commissioner appointed under sub-section (1) of section 4 of the Census Act, 1948;

37 of 1948.

(b) "Commission" means the Election Commission referred to in article 324 of the Constitution;

(c) "Delimitation Act" means the Delimitation Act, 2002;

33 of 2002.

(d) "Delimitation Order" means the Delimitation of Parliamentary and Assembly Constituencies Order, 2008;

(e) "last census" means the census held in India in 2001;

(f) "Scheduled Castes Orders" means the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Castes) (Union Territories) Order, 1951, the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 and the Constitution (Puducherry) Scheduled Castes Order, 1964, made by the President under article 341 of the Constitution;

(g) "Scheduled Tribes Orders" means the Constitution (Scheduled Tribes) Order, 1950, the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 and the Constitution (Sikkim) Scheduled Tribes Order, 1978, made by the President under article 342 of the Constitution;

(h) "State" includes a Union territory having a Legislative Assembly, but does not include the State of Jammu and Kashmir.

3. (1) As soon as may be after the commencement of this Ordinance, the population as at the last census, of the Scheduled Castes or, as the case may be, of the Scheduled Tribes, in each State shall be ascertained or estimated by the Census Commissioner.

Estimation of population of Scheduled Castes and Scheduled Tribes.

(2) Where by reason of the amendments made in the Scheduled Castes Orders and the Scheduled Tribes Orders after the last census and upto 31st May, 2012, the population of the Scheduled Castes or the Scheduled Tribes as at the last census is varied in a State, the Census Commissioner shall ascertain or estimate as on the 1st day of March, 2001, the population of the Scheduled Castes or the Scheduled Tribes so varied, and also ascertain or estimate the proportion of such population of the Scheduled Castes or the Scheduled Tribes, respectively, to the total population of the State in the last census.

(3) The population figures ascertained or estimated under sub-section (2) shall be notified by the Census Commissioner in the Gazette of India.

(4) The population figures notified under sub-section (3) shall be taken to be the relevant population figures as ascertained or estimated at the last census and shall supersede any figures previously published; and the figures so notified shall be final and shall not be called in question in any court.

4. (1) After the population figures have been notified for any State under section 3, the Commission shall make such amendments as may be necessary in the Delimitation Order, having regard to the provisions of articles 81, 170, 330 and 332 of the Constitution, section 8 of the Delimitation Act, and of this Ordinance, for the purpose of giving proper representation to the Scheduled Castes or, as the case may be, to the Scheduled Tribes of that State, and the First Schedule and the Second Schedule to the Representation of the People Act, 1950 shall be deemed to have been amended accordingly.

Readjustment of territorial constituencies by Commission.

43 of 1950.

(2) In making any amendments in the Delimitation Order under sub-section (1), the Commission shall, as far as may be necessary, have regard to the provisions of clauses (c) and (d) of sub-section (1) of section 9 of the Delimitation Act.

(3) The Commission shall—

(a) publish its proposals for the amendments in the Gazette of India and the Official Gazettes of the States concerned and also in such other manner as it thinks fit;

(b) specify a date on or after which such proposals will be further considered by it;

(c) consider all objections and suggestions which may have been received by its before the date so specified and for such consideration hold one or more public sittings at such place or places in each State as it thinks fit; and

(d) thereafter make necessary amendments in the Delimitation Order.

5. (1) In the discharge of its functions under its Ordinance, the Commission shall determine its own procedure and shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

Procedure and powers of Commission.

5 of 1908.

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the production of any document; and

(c) requisitioning any public record from any court or office.

(2) The Commission shall have the power to require any person to furnish any information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, any matter under the consideration of the Commission.

(3) The Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

2 of 1974.

Explanation.—For the purposes of enforcing the attendance of witnesses, the jurisdiction of the Commission shall be the limits of the territory of India.

Publication of amendments and their dates of operation.

6. (1) The Commission shall cause the amendments made by it in the Delimitation Order to be published in the Gazette of India and in the Official Gazettes of the States concerned.

(2) On and from the date of publication in the Gazette of India, every such amendment shall have the force of law and shall not be called in question in any court.

(3) As soon as may be after such publication in the Gazette of India and in the Official Gazette of the State, every such amendment shall be laid before the House of the People and the Legislative Assembly of the State concerned.

(4) Subject to the provisions of sub-section (5), the readjustment of seats and territorial constituencies in the House of the People or in the Legislative Assembly of a State necessitated by any amendments made by the Commission in the Delimitation Order and provided for in that Order as so amended shall apply in relation to every election to the House of the People or, as the case may be, to the Assembly to any State, held after the publication of such amendments in the Gazette of India, and shall so apply notwithstanding such provisions contained in the Representation of the People Act, 1950.

43 of 1950.

(5) Nothing contained in the foregoing sub-section shall affect the representation in the House of the People or in the Legislative Assembly of a State, until the dissolution of the House of the People or of the Assembly of any State, as the case may be, existing on the date of publication of the amendments made by the Commission in the Gazette of India.

Certain other powers of Commission.

7. (1) The Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned,—

(a) correct any printing mistake in the Delimitation Order as amended under this Ordinance or any error occurring therein from any inadvertent slip or omission; and

(b) where the boundaries or the name of any district or any territorial division mentioned in the said Order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the Delimitation Order up-to-date.

(2) Every notification under this section shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned.

Validation of acts done before the commencement of Ordinance.

8. All things done and all steps taken before the commencement of this Ordinance by the Census Commissioner for the ascertainment or estimation of population of the Scheduled Castes and the Scheduled Tribes, or by the Commission for the purpose of readjustment of seats and territorial constituencies shall, in so far as they are in conformity with the provisions of this Ordinance, be deemed to have been done or taken under these provisions as if such provisions were in force at the time such things were done or such steps were taken.

Power to remove difficulties.

9. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of Parliament.

Validation of acts done under Ordinance 6 of 2013.

10. Notwithstanding the fact that the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Ordinance, 2013 has ceased to operate, anything done or any action taken or purported to have been done or taken under the provisions of the said Ordinance shall be deemed to

have been done or taken under the corresponding provisions of this Ordinance as if such provisions had been in force at all material times.

Sd/-
PRANAB MUKHERJEE,
President.

Sd/-
P. K. MALHOTRA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTH,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Government of Gujarat

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 14th October, 2013.

No. RPB/11-2013/Ord.-11-2013/E:- The following Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 28th September, 2013 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 28th September, 2013/Asvina 6, 1935 (Saka).

THE INDIAN MEDICAL COUNCIL (AMENDMENT) SECOND ORDINANCE, 2013

No. 11 of 2013

Promulgated by the President in the Sixty-fourth Year of the Republic of India.

An Ordinance further to amend the Indian Medical Council Act, 1956.

WHEREAS the Indian Medical Council (Amendment) Ordinance, 2013 was promulgated by the President on the 21st day of May, 2013;

AND WHEREAS the Indian Medical Council (Amendment) Bill, 2013 with certain modifications was introduced in the Council of States to replace the said Ordinance, which has not been passed and is pending in that House;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance with certain modifications;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1.(1) This Ordinance may be called the Indian Medical Council (Amendment) Short title and
Second Ordinance, 2013. commencement.

(2) It shall be deemed to have come into force on the 15th day of May, 2013.

Amendment
of long title.

2. In the Indian Medical Council Act, 1956 (hereinafter referred to as the principal Act), 102 of 1956.
for the long title, the following long title shall be substituted, namely:—

“An Act to provide for the constitution of the Medical Council of India and for the determination, co-ordination, maintenance and regulation of standards of medical education, the practice of medicine, maintenance of Indian Medical Register and to make endeavour in making available doctors in all States and for matters connected therewith or incidental thereto.”

Amendment
of section 2.

3. In section 2 of the principal Act, in clause (1), after the words “a medical faculty”, the following shall be inserted, namely:—

“but does not include Deemed University for the purpose of section 3 of the Act”.

Amendment
of section 3.

4. In section 3 of the principal Act,—

(a) in sub-section (1),—

(i) after clause (a), the following clause shall be inserted, namely:—

(aa) one member, to represent the Union territories by rotation, to be nominated by the Central Government;”;

(ii) for clause (b), the following clause shall be substituted, namely:—

“(b) one member from each University, to be elected from amongst the members of the medical faculty of the University by members of the Senate of the University or in case the University has no Senate, by members of the Court or in case the University has no Court, a body equivalent to the Senate or the Court:

Provided that where there is Health University in a State, the Senate of the Health University or in case the Health University has no Senate, by members of the Court or in case the University has no Court, a body equivalent to the Senate or the Court of that University, shall elect one representative for every ten medical colleges affiliated to it, from amongst the medical faculty of those medical colleges, to represent such medical colleges:

Provided further that a Health University with less than ten medical colleges affiliated to it, shall also be eligible to elect one representative to represent such medical colleges:

Provided also that such number of representatives shall be reviewed by the Central Government after every four years;”;

(iii) clause (d) shall be omitted;

(b) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that no person shall hold office as the President or, as the case may be, the Vice-President for more than two terms.”

Insertion of
new section
3AA.

5. After section 3A of the principal Act, the following section shall be inserted, namely:—

Reconstitution
of Council.

“3AA. The Central Government shall, after the commencement of the Indian Medical Council (Amendment) Second Ordinance, 2013, reconstitute the Council, by notification in the Official Gazette, and publish the names of the members nominated or elected to the Council under sub-section (1) of section 3 within a period not exceeding one hundred and eighty days:

Provided that the Board of Governors constituted under sub-section (4) of section 3A shall continue to exercise the powers and perform the functions of the Council till the new Council is reconstituted or for such period not exceeding one hundred and eighty days, whichever is earlier.”

6. In section 4 of the principal Act, in sub-section (1),—

Amendment
of section 4.

(a) the words, brackets and letter "or clause (d)" shall be omitted;

(b) the words, brackets, letter and figures "and any rules so made provide that pending the preparation of the Indian Medical Register in accordance with the provisions of this Act, the members referred to in clause (d) of sub-section (1) of section 3 may be nominated by the Central Government instead of being elected as provided therein," shall be omitted.

7. In section 7 of the principal Act,—

Amendment
of section 7.

(a) in sub-section (1), for the words "five years", the words "four years" shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Subject to the provisions of the Act, a member, whether nominated or elected, shall hold office for a term of four years.";

(c) in sub-section (6), for the words "five years", the words "four years" shall be substituted.

8. After section 9 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
9A.

"9A. (1) The Council shall, subject to the provisions of the Act and rules made thereunder, take measures to determine, coordinate and maintain the standards of medical education and practice in medicine, the Indian Medical Register and make endeavour in making available doctors in all States.

Functions of
Council.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1), may, *inter alia*, provide for all or any of the following matters, namely:—

(a) lay down the standards of professional ethics in the practice of medicine;

(b) grant or withdraw permission for establishment of medical college and course of study in medical education and ensure compliance of its terms and conditions for such permission;

(c) maintain the Indian Medical Register;

(d) render advice to the Central Government or the State Government on matters relating to the medical education and practice in medicine;

(e) facilitate medical education in the institutions situated outside the country;

(f) undertake and recommend to the Central Government or the State Government such measures as may be necessary to regulate medical education in or outside the country;

(g) organise seminars, symposiums and workshops in order to promote continuous medical education and practice in medicine; and

(h) perform such other functions as may be laid down in the rules made by the Central Government."

9. In section 13 of the principal Act,—

Amendment
of section 13.

(a) in sub-section (2) and (3), for the words "a citizen of India", the words "a citizen of India or an overseas citizen of India" shall respectively be substituted;

(b) in sub-section (4A), for the words "a citizen of India", the words "a citizen of India or an overseas citizen of India" shall be substituted;

(c) sub-section (4B) and the proviso relating thereto shall be omitted;

(d) in sub-section (4C), for the words, brackets, figures and letters "sub-sections (4A) and (4B)", the word, brackets, figure and letter "sub-section (4A)" shall be substituted;

(e) after sub-section (5), the following Explanation shall be inserted, namely:—

Explanation.—For the purposes of this section, the expression "overseas citizen of India" shall have the meaning assigned to it in clause (ee) of sub-section (1) of section 2 of the Citizenship Act, 1955.

57 of 1955.

Amendment
of section 14.

10. In section 14 of the principal Act, in the proviso to sub-section (1), the words "for the time being for the purposes of teaching, research or charitable work" shall be omitted.

Amendment
of section 21.

11. In section 21 of the principal Act,—

(a) in sub-section (1), for the words "the names", the words "the names and biometric details" shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

(2A) The Council shall, in addition to the Indian Medical Register referred to in sub-section (1), maintain the Medical Register in electronic form containing the particulars included in the Indian Medical Register.

Explanation.—For the purpose of this sub-section, the expression, "electronic form" shall have the meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000.

21 of 2000.

Insertion of new
section 30A.

12. After section 30 of the principal Act, the following section shall be inserted, namely:—

Resignation,
removal and
suspension of
President, Vice
President or
members of
Council.

"30A. (1) The President, Vice-President or any member of the Council may, by notice in writing under his hand addressed to the Central Government, resign from his office:

Provided that the President, Vice-President or any member of the Council shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of a period of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may remove from office the President, Vice-President, or any member of the Council, who—

(a) has been adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as such President, Vice-President, or other member; or

(c) is of unsound mind and stand so declared by a competent court; or

(d) has been convicted of an offence involving moral turpitude; or

(e) has acquired such financial or any other interest in any medical institution falling within the purview of the Council, which is likely to affect prejudicially the exercise of his functions as the President, Vice President, or a member; or

(f) is unable to perform or has made persistent defaults—

(i) in the performance of the duties imposed on him under this Act or has exceeded or abused his position; or

(ii) either wilfully or without sufficient cause neglects to comply with the directions issued by the Central Government under sections 33A and 33B; or

(g) has been guilty of proved misbehaviour or his continuance in-office would be detrimental in public interest.

(3) No person shall be removed from his office on the grounds specified in clause (e) or clause (f) or clause (g) of sub-section (2), unless he has been given a reasonable opportunity of being heard in the matter."

13. In section 32 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 32.

"(2) In particular, and without prejudice to the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of election of the Council under sub-section (1) of section 4;

(b) such other functions of the Council under clause (h) of sub-section (2) of section 9A as may be laid down by the Central Government;

(c) the conditions and payment of fees for filing of an appeal before the Central Government under sub-section (2) of section 24;

(d) any other matter which is required to be, or may be, provided by rules or in respect of which provision is to be made by rules."

14. In section 33 of the principal Act, for clause (ma), the following clause shall be substituted, namely:—

Amendment of section 33.

"(ma) the modalities for conducting screening test under sub-section (4A) of section 13;"

15. After section 33 of the principal Act, the following sections shall be inserted, namely:

Insertion of new sections 33A, 33B and 33C

"33A. Without prejudice to the foregoing provisions of this Act, the Council shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time, and the question whether the direction given is one of policy or not shall be decided by the Central Government.

Power of Central Government to give directions.

33B. (1) Where the Central Government considers it expedient so to do, it may, by order in writing, direct the Council to make any regulations or to amend or revoke any regulations already made by it, within such period as the Central Government may specify in this behalf.

Powers of Central Government to direct regulations to be made or to amend regulations.

(2) If the Council fails or neglects to comply with such order within the specified period, the Central Government may make the regulations or amend or revoke the regulations made by the Council, as the case may be, in such manner as the Central Government thinks fit.

33C. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more

Laying of rules and regulations

successive sessions; and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or both Houses agree that the rule and regulation should not be made, the rule and regulation shall, thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity or anything previously done under that rule or regulation."

Validation and
sayings

16: Notwithstanding the fact that the Indian Medical Council (Amendment) Ordinance, 2013 has ceased to operate, anything done or any action taken or purported to have been done or taken or any permission or direction given under the said Ordinance shall be deemed to have been done, taken or given under the corresponding provisions of this Ordinance.

Ord. 4 of
2013.

Sd/-
PRANAB MUKHERJEE,
President.

Sd/-
P. K. MALHOTRA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTH,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



The Gujarat Government Gazette

EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances promulgated by the President.

Legislative and Parliamentary Affairs Department

Sachivalaya, Gandhinagar, 30th October, 2013.

No. RPB/45-2013/Act.-18-2013/E:- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

Legislative Department

New Delhi, the 30th August, 2013, BhadraPad 8, 1934 (Sake)

The following Act of Parliament has received the assent of the President on the 29th August, 2013, is hereby published for general information:-

THE COMPANIES ACT, 2013

(No. 18 OF 2013)

[29th August, 2013.]

An Act to consolidate and amend the law relating to companies.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Companies Act, 2013.

(2) It extends to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official gazette, appoint and different dates may be appointed for different provisions of this

Short title,
extent,
commencement
and
Application.

Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

(4) The provisions of this Act shall apply to—

- (a) companies incorporated under this Act or under any previous company law;
- (b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999; 4 of 1938.
41 of 1999.
- (c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949; 10 of 1949.
- (d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003; 36 of 2003.
- (e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and
- (f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

Definitions.

2. In this Act, unless the context otherwise requires,—

(1) “abridged prospectus” means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;

(2) “accounting standards” means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;

(3) “alter” or “alteration” includes the making of additions, omissions and substitutions;

(4) “Appellate Tribunal” means the National Company Law Appellate Tribunal constituted under section 410;

(5) “articles” means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act;

(6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

(7) “auditing standards” means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;

(8) “authorised capital” or “nominal capital” means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;

(9) “banking company” means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.

(10) "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company;

(11) "body corporate" or "corporation" includes a company incorporated outside India, but does not include—

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

(12) "book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

(13) "books of account" includes records maintained in respect of—

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

(14) "branch office", in relation to a company, means any establishment described as such by the company;

(15) "called-up capital" means such part of the capital, which has been called for payment;

(16) "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;

(17) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;

(18) "Chief Executive Officer" means an officer of a company, who has been designated as such by it;

(19) "Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;

(20) "company" means a company incorporated under this Act or under any previous company law;

(21) "company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

(22) "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

(23) "Company Liquidator", in so far as it relates to the winding up of a company, means a person appointed by—

(a) the Tribunal in case of winding up by the Tribunal; or

(b) the company or creditors in case of voluntary winding up,

as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;

(24) "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;

56 of 1980.

(25) "company secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980;

56 of 1980.

(26) "contributory" means a person liable to contribute towards the assets of the company in the event of its being wound up.

Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;

(27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(28) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;

23 of 1959.

(29) "court" means—

(i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);

(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;

(iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;

(iv) the Special Court established under section 435;

(v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;

(30) "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

(31) "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

(32) "depository" means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996;

22 of 1996.

(33) "derivative" means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(34) "director" means a director appointed to the Board of a company;

(35) "dividend" includes any interim dividend;

(36) "document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

(37) "employees' stock option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

(38) "expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

(39) "financial institution" includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934;

2 of 1934.

(40) "financial statement" in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

(41) "financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

(42) "foreign company" means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

(43) "free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

shall not be treated as free reserves;

(44) "Global Depository Receipt" means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;

(45) "Government company" means any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

(46) "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;

(47) "independent director" means an independent director referred to in sub-section (5) of section 149;

(48) "Indian Depository Receipt" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

(49) "interested director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;

(50) "issued capital" means such capital as the company issues from time to time for subscription;

(51) "key managerial personnel", in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed;

(52) "listed company" means a company which has any of its securities listed on any recognised stock exchange;

(53) "manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

(54) "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document, or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

(55) “member”, in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

(56) “memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;

(57) “net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

(58) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(59) “officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

(60) “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

(61) "Official Liquidator" means an Official Liquidator appointed under sub-section (1) of section 359;

(62) "One Person Company" means a company which has only one person as a member;

(63) "ordinary or special resolution" means an ordinary resolution, or as the case may be, special resolution referred to in section 114;

(64) "paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

(65) "postal ballot" means voting by post or through any electronic mode;

(66) "prescribed" means prescribed by rules made under this Act;

(67) "previous company law" means any of the laws specified below:—

(i) Acts relating to companies in force before the Indian Companies Act, 1866;

10 of 1866.

(ii) the Indian Companies Act, 1866;

10 of 1866.

(iii) the Indian Companies Act, 1882;

6 of 1882.

(iv) the Indian Companies Act, 1913;

7 of 1913.

(v) the Registration of Transferred Companies Ordinance, 1942;

Ord. 54 of 1942.

(vi) the Companies Act, 1956; and

1 of 1956.

(vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force—

(A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or

7 of 1913.

62 of 1956.

25 of 1968.

Sikkim Act 8
of 1961.

(B) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned;

(viii) the Portuguese Commercial Code, in so far as it relates to *sociedades anonimas*; and

(ix) the Registration of Companies (Sikkim) Act, 1961;

(68) "private company" means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

(69) "promoter" means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

(70) "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

(71) "public company" means a company which—

(a) is not a private company;

(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

(72) "public financial institution" means—

(i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956;

31 of 1956.

(ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;

1 of 1956.

(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

58 of 2002.

(iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;

1 of 1956.

(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

(A) it has been established or constituted by or under any Central or State Act; or

(B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;

(73) "recognised stock exchange" means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(74) "register of companies" means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

(75) "Registrar" means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;

(76) "related party", with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager is a member or director;

(v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

(ix) such other person as may be prescribed;

(77) "relative", with reference to any person, means any one who is related to another, if—

(i) they are members of a Hindu Undivided Family;

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed;

43 of 1961.

(78) "remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961;

(79) "Schedule" means a Schedule annexed to this Act;

2 of 1934.

(80) "scheduled bank" means the scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934;

42 of 1956.

(81) "securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

15 of 1992.

(82) "Securities and Exchange Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(83) "Serious Fraud Investigation Office" means the office referred to in section 211;

(84) "share" means a share in the share capital of a company and includes stock;

(85) "small company" means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

(86) "subscribed capital" means such part of the capital which is for the time being subscribed by the members of a company;

(87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression "company" includes any body corporate;

(d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

(88) "sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(89) "total voting power", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company

if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;

(90) "Tribunal" means the National Company Law Tribunal constituted under section 408;

(91) "turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;

(92) "unlimited company" means a company not having any limit on the liability of its members;

(93) "voting right" means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;

(94) "whole-time director" includes a director in the whole-time employment of the company;

(95) words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

42 of 1956.
15 of 1992.
22 of 1996.

CHAPTER II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

3. (1) A company may be formed for any lawful purpose by—

Formation of company.

(a) seven or more persons, where the company to be formed is to be a public company;

(b) two or more persons, where the company to be formed is to be a private company; or

(c) one person, where the company to be formed is to be One Person Company that is to say, a private company,

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

(2) A company formed under sub-section (1) may be either—

- (a) a company limited by shares; or
- (b) a company limited by guarantee; or
- (c) an unlimited company.

Memorandum.

4. (1) The memorandum of a company shall state—

(a) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company;

Provided that nothing in this clause shall apply to a company registered under section 8;

- (b) the State in which the registered office of the company is to be situated;
- (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;
- (d) the liability of members of the company, whether limited or unlimited, and also state,—

(i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and

(ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—

(A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

(B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

(e) in the case of a company having a share capital,—

(i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and

(ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

(f) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

(2) The name stated in the memorandum shall not—

(a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(b) be such that its use by the company—

- (i) will constitute an offence under any law for the time being in force; or
- (ii) is undesirable in the opinion of the Central Government.

(3) Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains—

(a) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or

(b) such word or expression, as may be prescribed,

unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

(4) A person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as—

(a) the name of the proposed company; or

(b) the name to which the company proposes to change its name.

(5) (i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.

(ii) Where after reservation of name under clause (i), it is found that name was applied by furnishing wrong or incorrect information, then,—

(a) if the company has not been incorporated, the reserved name shall be cancelled and the person making application under sub-section (4) shall be liable to a penalty which may extend to one lakh rupees;

(b) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard—

(i) either direct the company to change its name within a period of three months, after passing an ordinary resolution;

(ii) take action for striking off the name of the company from the register of companies; or

(iii) make a petition for winding up of the company.

(6) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.

(7) Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

5. (1) The articles of a company shall contain the regulations for management of the company.

Articles.

(2) The articles shall also contain such matters, as may be prescribed:

Provided that nothing prescribed in this sub-section shall be deemed to prevent a company from including such additional matters in its articles as may be considered necessary for its management.

(3) The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(4) The provisions for entrenchment referred to in sub-section (3) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(5) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

(6) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

(7) A company may adopt all or any of the regulations contained in the model articles applicable to such company.

(8) In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

(9) Nothing in this section shall apply to the articles of a company registered under any previous company law unless amended under this Act.

Act to over-
ride memoran-
dum, articles,
etc.

6. Save as otherwise expressly provided in this Act—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

Incorporation
of company.

7. (1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—

(a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

(b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

(c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(d) the address for correspondence till its registered office is established;

(e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

(f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and

(g) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

(2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that sub-section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

(4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.

(5) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

(6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company; or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of sub-section (1) shall each be liable for action under section 447.

(7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

(b) direct that liability of the members shall be unlimited; or

(c) direct removal of the name of the company from the register of companies; or

(d) pass an order for the winding up of the company; or

(e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

(i) the company shall be given a reasonable opportunity of being heard in the matter; and

(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

8. (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members,

Formation of
companies
with chari-
table objects,
etc.

the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

(2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(3) A firm may be a member of the company registered under this section.

(4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

(6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:

Provided further that a copy of every such order shall be given to the Registrar.

(7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such

conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269.

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

9. From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

Effect of
registration.

10. (1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

Effect of
memorandum
and articles.

(2) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

11. (1) A company having a share capital shall not commence any business or exercise any borrowing powers unless—

Commence-
ment of
business, etc.

(a) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty which may extend to five thousand rupees and every officer who is in default shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

Registered
office of
company.

12. (1) A company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(2) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

(3) Every company shall—

(a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

(b) have its name engraved in legible characters on its seal;

(c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and

(d) have its name printed on *hundies*, promissory notes, bills of exchange and such other documents as may be prescribed:

Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years as required under clauses (a) and (c):

Provided further that the words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

(4) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same:

(5) Except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed,—

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company:

Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner.

(6) The confirmation referred to in sub-section (5) shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

(7) The certificate referred to in sub-section (6) shall be conclusive evidence that all the requirements of this Act with respect to change of registered office in pursuance of sub-section (5) have been complied with and the change shall take effect from the date of the certificate.

(8) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

13. (1) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.

Alteration of memorandum.

(2) Any change in the name of a company shall be subject to the provisions of sub-sections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing:

Provided that no such approval shall be necessary where the only change in the name of the company is the deletion therefrom, or addition thereto, of the word "Private", consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.

(3) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(5) The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

(6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—

(a) the special resolution passed by the company under sub-section (1);

(b) the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

(7) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed; who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(8) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

(i) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (a) of sub-section (6) of this section.

(10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(11) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Alteration of articles.

14. (1) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of—

(a) a private company into a public company; or

(b) a public company into a private company:

Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company:

Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.

(2) Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

(3) Any alteration of the articles registered under sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.

Alteration of memorandum or articles to be noted in every copy.

15. (1) Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

(2) If a company makes any default in complying with the provisions of sub-section (1), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.

Rectification of name of company.

16. (1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—

(a) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this

Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.

(2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

(3) If a company makes default in complying with any direction given under sub-section (1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.

17. (1) A company shall, on being so requested by a member, send to him within seven days of the request and subject to the payment of such fees as may be prescribed, a copy of each of the following documents, namely:—

(a) the memorandum;

(b) the articles; and

(c) every agreement and every resolution referred to in sub-section (1) of section 117, if and in so far as they have not been embodied in the memorandum or articles.

(2) If a company makes any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

18. (1) A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.

(2) Where the conversion is required to be done under this section, the Registrar shall on an application made by the company, after satisfying himself that the provisions of this Chapter applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents referred to in sub-section (1), issue a certificate of incorporation in the same manner as its first registration.

(3) The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

19. (1) No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub-section shall apply to a case—

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

Copies of memorandum, articles, etc., to be given to members.

Conversion of companies already registered.

Subsidiary company not to hold shares in its holding company.

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

Provided further that the subsidiary company referred to in the preceding proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said proviso.

(2) The reference in this section to the shares of a holding company which is a company limited by guarantee or an unlimited company, not having a share capital, shall be construed as a reference to the interest of its members, whatever be the form of interest.

Service of documents.

20. (1) A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed:

Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

(2) Save as provided in this Act or the rules made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed:

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Explanation.—For the purposes of this section, the term “courier” means a person or agency which delivers the document and provides proof of its delivery.

Authentic-
ation of
documents,
proceedings
and contracts.

21. Save as otherwise provided in this Act,—

(a) a document or proceeding requiring authentication by a company; or

(b) contracts made by or on behalf of a company,

may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf.

Execution of
bills of
exchange, etc.

22. (1) A bill of exchange, *hundi* or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.

(2) A company may, by writing under its common seal, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

(3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.

CHAPTER III

PROSPECTUS AND ALLOTMENT OF SECURITIES

PART I.—Public offer

23. (1) A public company may issue securities—

(a) to public through prospectus (herein referred to as "public offer") by complying with the provisions of this Part; or

(b) through private placement by complying with the provisions of Part II of this Chapter; or

(c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

(2) A private company may issue securities—

(a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or

(b) through private placement by complying with the provisions of Part II of this Chapter.

Explanation.—For the purposes of this Chapter, "public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

24. (1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

(a) in so far as they relate to—

(i) issue and transfer of securities; and

(ii) non-payment of dividend,

by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf;

(b) in any other case, be administered by the Central Government.

Explanation.—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

(2) The Securities and Exchange Board shall, in respect of matters specified in sub-section (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992.

25. (1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in sub-sections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

Public offer and private placement.

Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.

Document containing offer of securities for sale to be deemed prospectus.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

(3) Section 26 as applied by this section shall have effect as if—

(i) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

(b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

(ii) the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

Matters to be
stated in
prospectus.

26. (1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—

(a) state the following information, namely:—

(i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

(ii) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

(iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;

(iv) details about underwriting of the issue;

(v) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;

(vi) the authority for the issue and the details of the resolution passed therefor;

(vii) procedure and time schedule for allotment and issue of securities;

(viii) capital structure of the company in the prescribed manner;

(ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;

(x) main objects and present business of the company and its location, schedule of implementation of the project;

(xi) particulars relating to—

(A) management perception of risk factors specific to the project;

(B) gestation period of the project;

(C) extent of progress made in the project;

(D) deadlines for completion of the project; and

(E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;

(xii) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;

(xiii) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and

(xiv) disclosures in such manner as may be prescribed about sources of promoter's contribution;

(b) set out the following reports for the purposes of the financial information, namely:—

(i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

(ii) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;

(iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and

(iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;

(c) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder; and

42 of 1956.
15 of 1992.

(d) state such other matters and set out such other reports, as may be prescribed.

(2) Nothing in sub-section (1) shall apply—

(a) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

(3) Subject to sub-section (2), the provisions of sub-section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

Explanation.—The date indicated in the prospectus shall be deemed to be the date of its publication.

(4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.

(5) A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.

(6) Every prospectus issued under sub-section (1) shall, on the face of it,—

(a) state that a copy has been delivered for registration to the Registrar as required under sub-section (4); and

(b) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

(7) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus.

(8) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4).

(9) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

27. (1) A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution:

Variation in terms of contract or objects in prospectus.

Provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

(2) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

28. (1) Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed.

Offer of sale of shares by certain members of company.

(2) Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

(3) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

Public offer of securities to be in dematerialised form.

29. (1) Notwithstanding anything contained in any other provisions of this Act,—

(a) every company making public offer; and

(b) such other class or classes of public companies as may be prescribed,

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

22 of 1996.

(2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

22 of 1996.

Advertisement of prospectus.

30. Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure.

Shelf prospectus.

31. (1) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(3) Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Explanation.—For the purposes of this section, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Red herring prospectus.

32. (1) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(2) A company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(3) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(4) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Explanation.—For the purposes of this section, the expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

33. (1) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:

Issue of application forms for securities.

Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—

(a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to such securities; or

(b) in relation to securities which were not offered to the public.

(2) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

(3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

34. Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447:

Criminal liability for mis-statements in prospectus.

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

35. (1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

Civil liability for mis-statements in prospectus.

(a) is a director of the company at the time of the issue of the prospectus;

(b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

(c) is a promoter of the company;

(d) has authorised the issue of the prospectus; and

(e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Punishment
for
fraudulently
inducing
persons to
invest money.

36. Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or

(b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution,

shall be liable for action under section 447.

Action by
affected
persons.

37. A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

Punishment
for person-
ation for
acquisition,
etc., of
securities.

38. (1) Any person who—

(a) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

(b) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or

(c) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

(3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

(4) The amount received through disgorgement or disposal of securities under sub-section (3) shall be credited to the Investor Education and Protection Fund.

Allotment of
securities by
company.

39. (1) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

(2) The amount payable on application on every security shall not be less than five per cent. of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.

(4) Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed.

(5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

40. (1) Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

Securities to be dealt with in stock exchanges.

(2) Where a prospectus states that an application under sub-section (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.

(3) All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.

(4) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

(6) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.

41. A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed.

Global depository receipt.

PART II.—*Private placement*

Offer or
invitation for
subscription
of securities
on private
placement.

42. (1) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issue of a private placement offer letter.

(2) Subject to sub-section (1), the offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed.

Explanation I.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

Explanation II.—For the purposes of this section, the expression—

(i) "qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 as amended from time to time.

(ii) "private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.

(3) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

(4) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.

42 of 1956.
15 of 1992.

(5) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

(7) All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter.

(8) No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.

(9) Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(10) If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

CHAPTER IV

SHARE CAPITAL AND DEBENTURES

43. The share capital of a company limited by shares shall be of two kinds, namely:—

Kinds of
share capital.

(a) equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) preference share capital:

Provided that nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

Explanation.—For the purposes of this section,—

(i) “equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital;

(ii) “preference share capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

(a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

(iii) capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

(a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Nature of
shares or
debentures.

44. The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Numbering of
shares.

45. Every share in a company having a share capital shall be distinguished by its distinctive number:

Provided that nothing in this section shall apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

Certificate of
shares.

46. (1) A certificate, issued under the common seal of the company, specifying the shares held by any person, shall be *prima facie* evidence of the title of the person to such shares.

(2) A duplicate certificate of shares may be issued, if such certificate —

(a) is proved to have been lost or destroyed; or

(b) has been defaced, mutilated or torn and is surrendered to the company.

(3) Notwithstanding anything contained in the articles of a company, the manner of issue of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members and other matters shall be such as may be prescribed.

(4) Where a share is held in depository form, the record of the depository is the *prima facie* evidence of the interest of the beneficial owner.

(5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.

Voting rights.

47. (1) Subject to the provisions of section 43 and sub-section (2) of section 50,—

(a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and

(b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

(2) Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company:

Provided that the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares:

Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

48. (1) Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

Variation of shareholders' rights.

(a) if provision with respect to such variation is contained in the memorandum or articles of the company; or

(b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

(2) Where the holders of not less than ten per cent. of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.

(4) The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

(5) Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

49. Where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.

Calls on shares of same class to be made on uniform basis.

Explanation.—For the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class.

50. (1) A company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

Company to accept unpaid share capital, although not called up.

(2) A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up.

51. A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

Payment of dividend in proportion to amount paid-up.

52. (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

Application of premiums received on issue of shares.

(2) Notwithstanding anything contained in sub-section (1), the securities premium account may be applied by the company—

(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

(b) in writing off the preliminary expenses of the company;

(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

(e) for the purchase of its own shares or other securities under section 68.

(3) The securities premium account may, notwithstanding anything contained in sub-sections (1) and (2), be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or

(c) for the purchase of its own shares or other securities under section 68.

Prohibition
on issue of
shares at
discount.

53. (1) Except as provided in section 54, a company shall not issue shares at a discount.

(2) Any share issued by a company at a discounted price shall be void.

(3) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Issue of sweat
equity shares.

54. (1) Notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:—

(a) the issue is authorised by a special resolution passed by the company;

(b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

(c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and

(d) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

(2) The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

Issue and
redemption
of preference
shares.

55. (1) No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable.

(2) A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed:

Provided that a company may issue preference shares for a period exceeding twenty years for infrastructure projects, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders:

Provided further that—

(a) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption;

(b) no such shares shall be redeemed unless they are fully paid;

(c) where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company; and

(d) (i) in case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed:

Provided also that premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

(ii) in a case not falling under sub-clause (i) above, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

(3) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed:

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Explanation.—For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

(4) The capital redemption reserve account may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Explanation.—For the purposes of sub-section (2), the term "infrastructure projects" means the infrastructure projects specified in Schedule VI.

56. (1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as

Transfer and
transmission
of securities.

may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

(2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

(3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

(a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;

(b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

(c) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;

(d) within a period of six months from the date of allotment in the case of any allotment of debenture:

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

(7) Without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447.

22 of 1996.

Punishment
for person-
ation of
shareholder.

57. If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

58. (1) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

Refusal of registration and appeal against refusal.

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

59. (1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

Rectification of register of members.

(2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

(5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Publication of authorised, subscribed and paid-up capital.

60. (1) Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up.

(2) If any default is made in complying with the requirements of sub-section (1), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.

Power of limited company to alter its share capital.

61. (1) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—

- (a) increase its authorised share capital by such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:

Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

- (c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;

- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share capital.

Further issue of share capital.

62. (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

- (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

- (i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

- (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;

(b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or

(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.

(3) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

(4) Notwithstanding anything contained in sub-section (3), where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion:

Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

(5) In determining the terms and conditions of conversion under sub-section (4), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

(6) Where the Government has, by an order made under sub-section (4), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (4) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

63. (1) A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

Issue of bonus shares.

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

(2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), unless—

(a) it is authorised by its articles;

(b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

(f) it complies with such conditions as may be prescribed.

(3) The bonus shares shall not be issued in lieu of dividend.

64. (1) Where—

(a) a company alters its share capital in any manner specified in sub-section (1) of section 61;

(b) an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing authorised capital of a company; or

(c) a company redeems any redeemable preference shares,

the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

(2) If a company and any officer of the company who is in default contravenes the provisions of sub-section (1), it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.

65. An unlimited company having a share capital may, by a resolution for registration as a limited company under this Act, do either or both of the following things, namely—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Notice to be given to Registrar for alteration of share capital.

Unlimited company to provide for reserve share capital on conversion into limited company.

66. (1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—

Reduction of
share capital.

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares,—

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company,

alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

(2) The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

(3) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

(4) The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.

(5) The company shall deliver a certified copy of the order of the Tribunal under sub-section (3) and of a minute approved by the Tribunal showing—

(a) the amount of share capital;

(b) the number of shares into which it is to be divided;

(c) the amount of each share; and

(d) the amount, if any, at the date of registration deemed to be paid-up on each share,

to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(6) Nothing in this section shall apply to buy-back of its own securities by a company under section 68.

(7) A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

(8) Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim,—

(a) every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and

(b) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(9) Nothing in sub-section (8) shall affect the rights of the contributories among themselves.

(10) If any officer of the company—

(a) knowingly conceals the name of any creditor entitled to object to the reduction;

(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or

(c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.

(11) If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

Restrictions on purchase by company or giving of loans by it for purchase of its shares.

67. (1) No company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.

(2) No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

(3) Nothing in sub-section (2) shall apply to—

(a) the lending of money by a banking company in the ordinary course of its business;

(b) the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company;

(c) the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership:

Provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

(4) Nothing in this section shall affect the right of a company to redeem any preference shares issued by it under this Act or under any previous company law.

(5) If a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

68. (1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2), a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of—

Power of company to purchase its own securities.

(a) its free reserves;

(b) the securities premium account; or

(c) the proceeds of the issue of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(2) No company shall purchase its own shares or other specified securities under sub-section (1), unless—

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back:

Provided that nothing contained in this clause shall apply to a case where—

(i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and

(ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

(c) the buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free reserves of the company:

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that financial year;

(d) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves:

Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies;

(e) all the shares or other specified securities for buy-back are fully paid-up;

(f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and

(g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with such rules as may be prescribed:

Provided that no offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

(3) The notice of the meeting at which the special resolution is proposed to be passed under clause (b) of sub-section (2) shall be accompanied by an explanatory statement stating—

(a) a full and complete disclosure of all material facts;

(b) the necessity for the buy-back;

(c) the class of shares or securities intended to be purchased under the buy-back;

(d) the amount to be invested under the buy-back; and

(e) the time-limit for completion of buy-back.

(4) Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under clause (b) of sub-section (2).

(5) The buy-back under sub-section (1) may be—

(a) from the existing shareholders or security holders on a proportionate basis;

(b) from the open market;

(c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

(6) Where a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution under clause (b) of sub-section (2) or a resolution under item (ii) of the proviso thereto, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board:

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

(7) Where a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.

(8) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a bonus issue or

in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

(9) Where a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.

(10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed:

Provided that no return shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

(11) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation I.—For the purposes of this section and section 70, “specified securities” includes employees’ stock option or other securities as may be notified by the Central Government from time to time.

Explanation II.—For the purposes of this section, “free reserves” includes securities premium account.

69. (1) Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.

Transfer of certain sums to capital redemption reserve account.

(2) The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

70. (1) No company shall directly or indirectly purchase its own shares or other specified securities—

Prohibition for buy-back in certain circumstances.

(a) through any subsidiary company including its own subsidiary companies;

(b) through any investment company or group of investment companies; or

(c) if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

(2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

Debentures.

71. (1) A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption:

Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

(2) No company shall issue any debentures carrying any voting rights.

(3) Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.

(4) Where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

(5) No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

(6) A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.

(7) Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion:

Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose.

(8) A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(9) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

(10) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

(11) If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.

(12) A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

(13) The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters.

72. (1) Every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death. Power to nominate.

(2) Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

CHAPTER V

ACCEPTANCE OF DEPOSITS BY COMPANIES

73. (1) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter: Prohibition on acceptance of deposits from public.

2 of 1934.

Provided that nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—

(a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(b) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;

(c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

(d) providing such deposit insurance in such manner and to such extent as may be prescribed;

(e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

(f) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

(3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

(4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

(5) The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.

Repayment of deposits, etc., accepted before commencement of this Act.

74. (1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

(a) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and

(b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

(2) The Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

(3) If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

Damages for fraud.

75. (1) Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in sub-section (3) of that section and liability under section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

(2) Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

76. (1) Notwithstanding anything contained in section 73, a public company, having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe:

Acceptance of deposits from public by certain companies.

Provided that such a company shall be required to obtain the rating (including its networth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits:

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

(2) The provisions of this Chapter shall, *mutatis mutandis*, apply to the acceptance of deposits from public under this section.

CHAPTER VI

REGISTRATION OF CHARGES

77. (1) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation:

Duty to register charges, etc.

Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed:

Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87:

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.

(2) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

(3) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).

(4) Nothing in sub-section (3) shall prejudice any contract or obligation for the repayment of the money secured by a charge.

78. Where a company fails to register the charge within the period specified in section 77, without prejudice to its liability in respect of any offence under this Chapter, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, within such time and in such form and manner as may be prescribed and the Registrar may, on such application, within a period of fourteen days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed:

Application for registration of charge.

Provided that where registration is effected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the

amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

Section 77 to apply in certain matters.

79. The provisions of section 77 relating to registration of charges shall, so far as may be, apply to—

(a) a company acquiring any property subject to a charge within the meaning of that section; or

(b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

Date of notice of charge.

80. Where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Register of charges to be kept by Registrar.

81. (1) The Registrar shall, in respect of every company, keep a register containing particulars of the charges registered under this Chapter in such form and in such manner as may be prescribed.

(2) A register kept in pursuance of this section shall be open to inspection by any person on payment of such fees as may be prescribed for each inspection.

Company to report satisfaction of charge.

82. (1) A company shall give intimation to the Registrar in the prescribed form, of the payment or satisfaction in full of any charge registered under this Chapter within a period of thirty days from the date of such payment or satisfaction and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section.

(2) The Registrar shall, on receipt of intimation under sub-section (1), cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding fourteen days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar, and if no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under section 81 and shall inform the company that he has done so:

Provided that the notice referred to in this sub-section shall not be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge.

(3) If any cause is shown, the Registrar shall record a note to that effect in the register of charges and shall inform the company.

(4) Nothing in this section shall be deemed to affect the powers of the Registrar to make an entry in the register of charges under section 83 or otherwise than on receipt of an intimation from the company.

Power of Registrar to make entries of satisfaction and release in absence of intimation from company.

83. (1) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, notwithstanding the fact that no intimation has been received by him from the company.

(2) The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under sub-section (1) of section 81.

84. (1) If any person obtains an order for the appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or if any person appoints such receiver or person under any power contained in any instrument, he shall, within a period of thirty days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the Registrar along with a copy of the order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

Intimation of appointment of receiver or manager.

(2) Any person appointed under sub-section (1) shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the Registrar shall register such notice.

85. (1) Every company shall keep at its registered office a register of charges in such form and in such manner as may be prescribed, which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed:

Company's register of charges.

Provided that a copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

(2) The register of charges and instrument of charges, kept under sub-section (1) shall be open for inspection during business hours—

(a) by any member or creditor without any payment of fees; or

(b) by any other person on payment of such fees as may be prescribed,

subject to such reasonable restrictions as the company may, by its articles, impose.

86. If any company contravenes any provision of this Chapter, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Punishment for contravention.

87. (1) The Central Government on being satisfied that—

(i) (a) the omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or

Rectification by Central Government in register of charges.

(b) the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or

(c) the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or

(ii) on any other grounds, it is just and equitable to grant relief,

it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time

for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(2) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

CHAPTER VII

MANAGEMENT AND ADMINISTRATION

Register of
members, etc.

88. (1) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—

(a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;

(b) register of debenture-holders; and

(c) register of any other security holders.

(2) Every register maintained under sub-section (1) shall include an index of the names included therein.

(3) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.

22 of 1996.

(4) A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in sub-section (1), called "foreign register" containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

(5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.

Declaration in
respect of
beneficial
interest in
any share.

89. (1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

(2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.

(5) If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(6) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed, within the time specified under section 403.

(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified under the first proviso to sub-section (1) of section 403, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

(9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.

90. Where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of section 216 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.

Investigation of beneficial ownership of shares in certain cases.

91. (1) A company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time, subject to giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board for listed companies or the companies which intend to get their securities listed, in such manner as may be prescribed.

Power to close register of members or debenture-holders or other security holders.

(2) If the register of members or of debenture-holders or of other security holders is closed without giving the notice as provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.

92. (1) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

Annual return.

(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(b) its shares, debentures and other securities and shareholding pattern;

(c) its indebtedness;

(d) its members and debenture-holders along with changes therein since the close of the previous financial year;

(e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;

(f) meetings of members or a class thereof, Board and its various committees along with attendance details;

(g) remuneration of directors and key managerial personnel;

(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(i) matters relating to certification of compliances, disclosures as may be prescribed;

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and

(k) such other matters as may be prescribed,

and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:

Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

(2) The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

(3) An extract of the annual return in such form as may be prescribed shall form part of the Board's report.

(4) Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.

(5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(6) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

93. Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.

Return to be
filed with
Registrar in
case promot-
ers' stake
changes.

94. (1) The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Place of keeping and inspection of registers, returns, etc.

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance:

Provided further that the period for which the registers, returns and records are required to be kept shall be such as may be prescribed.

(2) The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

(3) Any such member, debenture-holder, other security holder or beneficial owner or any other person may—

(a) take extracts from any register, or index or return without payment of any fee; or

(b) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.

(4) If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues.

(5) The Central Government may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

95. The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be *prima facie* evidence of any matter directed or authorised to be inserted therein by or under this Act.

Registers, etc., to be evidence.

96. (1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Annual general meeting.

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

(2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:

Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Explanation.—For the purposes of this sub-section, “National Holiday” means and includes a day declared as National Holiday by the Central Government.

Power of
Tribunal to
call annual
general
meeting.

97. (1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.

Power of
Tribunal to
call meetings
of members,
etc.

98. (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suo motu* or on the application of any director or member of the company who would be entitled to vote at the meeting,—

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

Punishment
for default in
complying
with provi-
sions of
sections 96
to 98.

99. If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Calling of
extraordinary
general
meeting.

100. (1) The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

(2) The Board shall, at the requisition made by,—

(a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote,

call an extraordinary general meeting of the company within the period specified in sub-section (4).

(3) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

(4) If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

(5) A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

(6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

101. (1) A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed:

Notice of meeting.

Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five per cent. of the members entitled to vote at such meeting.

(2) Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.

(3) The notice of every meeting of the company shall be given to—

(a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;

(b) the auditor or auditors of the company; and

(c) every director of the company.

(4) Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

102. (1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

Statement to be annexed to notice.

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each item of—

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1),—

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—

(i) the consideration of financial statements and the reports of the Board of Directors and auditors;

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors;

and

(b) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent. of the paid-up share capital of that company, also be set out in the statement.

(3) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement under sub-section (1).

(4) Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub-section (1), being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

(5) If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.

Quorum for
meetings.

103. (1) Unless the articles of the company provide for a larger number,—

(a) in case of a public company,—

(i) five members personally present if the number of members as on the date of meeting is not more than one thousand;

(ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

(2) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

(3) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Chairman of
meetings.

104. (1) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

(2) If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands under sub-section (1) shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

105. (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf:

Proxies.

Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll:

Provided further that, unless the articles of a company otherwise provide, this sub-section shall not apply in the case of a company not having a share capital:

Provided also that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy:

Provided also that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.

(2) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

(3) If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

(4) Any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(5) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees:

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) The instrument appointing a proxy shall—

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(7) An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

(8) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

Restriction on
voting rights.

106. (1) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

(2) A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

(3) On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

Voting by
show of hands.

107. (1) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.

(2) A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands under sub-section (1) and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

Voting
through
electronic
means.

108. The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

Demand for
poll.

109. (1) Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf,—

(a) in the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.

(2) The demand for a poll may be withdrawn at any time by the persons who made the demand.

(3) A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.

(4) A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than forty-eight hours from the time when the demand was made, as the Chairman of the meeting may direct.

(5) Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

(6) Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

(7) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

Postal ballot.

110. (1) Notwithstanding anything contained in this Act, a company—

(a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

(b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,

in such manner as may be prescribed, instead of transacting such business at a general meeting.

(2) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

111. (1) A company shall, on requisition in writing of such number of members, as required in section 100,—

Circulation of members' resolution.

(a) give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and

(b) circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.

(2) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists (or two or more copies which, between them, contain the signatures of all the requisitionists) is deposited at the registered office of the company,—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;

(ii) in the case of any other requisition, not less than two weeks before the meeting; and

(b) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called on a date within six weeks after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(3) The company shall not be bound to circulate any statement as required by clause (b) of sub-section (1), if on the application either of the company or of any other person who claims to be aggrieved, the Central Government, by order, declares that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(4) An order made under sub-section (3) may also direct that the cost incurred by the company by virtue of this section shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.

(5) If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.

112. (1) The President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company.

Representation of President and Governors in meetings.

(2) A person appointed to act under sub-section (1) shall, for the purposes of this Act, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

Representa-
tion of
corporations
at meeting of
companies and
of creditors.

113. (1) A body corporate, whether a company within the meaning of this Act or not, may,—

(a) if it is a member of a company within the meaning of this Act, by resolution of its Board of Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company;

(b) if it is a creditor, including a holder of debentures, of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised by resolution under sub-section (1) shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.

Ordinary and
special
resolutions.

114. (1) A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

(2) A resolution shall be a special resolution when—

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(b) the notice required under this Act has been duly given; and

(c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Resolutions
requiring
special notice.

115. Where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than one per cent. of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.

Resolutions
passed at
adjourned
meeting.

116. Where a resolution is passed at an adjourned meeting of—

(a) a company; or

(b) the holders of any class of shares in a company; or

(c) the Board of Directors of a company,

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed; and shall not be deemed to have been passed on any earlier date.

Resolutions
and agree-
ments to be
filed.

117. (1) A copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed within the time specified under section 403:

Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be embodied in or

annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

(2) If a company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(3) The provisions of this section shall apply to—

(a) special resolutions;

(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

(d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

(e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;

(g) resolutions passed in pursuance of sub-section (3) of section 179; and

(h) any other resolution or agreement as may be prescribed and placed in the public domain.

118. (1) Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

(2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(3) All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(4) In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain—

(a) the names of the directors present at the meeting; and

(b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

(5) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting,—

(a) is or could reasonably be regarded as defamatory of any person; or

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the company.

(6) The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (5).

Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot.

(7) The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.

(8) Where the minutes have been kept in accordance with sub-section (1) then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

(9) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.

(10) Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

56 of 1980.

(11) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

(12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Inspection of
minute-books
of general
meeting.

119. (1) The books containing the minutes of the proceedings of any general meeting of a company or of a resolution passed by postal ballot, shall—

(a) be kept at the registered office of the company; and

(b) be open, during business hours, to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection.

(2) Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes referred to in sub-section (1).

(3) If any inspection under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each such refusal or default, as the case may be.

(4) In the case of any such refusal or default, the Tribunal may, without prejudice to any action being taken under sub-section (3), by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

Maintenance
and inspection
of
documents in
electronic
form.

120. Without prejudice to any other provisions of this Act, any document, record, register, minutes, etc.,—

(a) required to be kept by a company; or

(b) allowed to be inspected or copies to be given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be prescribed.

Report on
annual
general
meeting.

121. (1) Every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.

(2) The company shall file with the Registrar a copy of the report referred to in sub-section (1) within thirty days of the conclusion of the annual general meeting with such fees as may be prescribed, or with such additional fees as may be prescribed, within the time as specified, under section 403.

(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

122. (1) The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to a One Person Company.

Applicability
of this
Chapter to
One Person
Company.

(2) The ordinary businesses as mentioned under clause (a) of sub-section (2) of section 102 which a company, other than a One Person Company, is required to transact at its annual general meeting, shall be transacted, in case of One Person Company, as provided in sub-section (3).

(3) For the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.

(4) Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.

CHAPTER VIII

DECLARATION AND PAYMENT OF DIVIDEND

123. (1) No dividend shall be declared or paid by a company for any financial year except—

Declaration
of dividend.

(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or

(b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

(2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.

(3) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared:

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

(4) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

(5) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company:

Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.

(6) A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

124. (1) Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

(2) The company shall, within a period of ninety days of making any transfer of an amount under sub-section (1) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

(3) If any default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(4) Any person claiming to be entitled to any money transferred under sub-section (1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

(5) Any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Fund established under sub-section (1) of section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

(6) All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed:

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

(7) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

125. (1) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).

Investor
Education and
Protection
Fund.

(2) There shall be credited to the Fund—

(a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;

(b) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;

(c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124;

(d) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999, and remaining unpaid or unclaimed on the commencement of this Act;

1 of 1956.

21 of 1999.

(e) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;

1 of 1956.

(f) the interest or other income received out of investments made from the Fund;

(g) the amount received under sub-section (4) of section 38;

(h) the application money received by companies for allotment of any securities and due for refund;

(i) matured deposits with companies other than banking companies;

(j) matured debentures with companies;

(k) interest accrued on the amounts referred to in clauses (h) to (j);

(l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;

(m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and

(n) such other amount as may be prescribed:

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

(3) The Fund shall be utilised for—

(a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;

(b) promotion of investors' education, awareness and protection;

(c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;

(d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and

(e) any other purpose incidental thereto,

in accordance with such rules as may be prescribed:

Provided that the person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C transferred to Investor Education and Protection Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the Fund in respect of such claims in accordance with rules made under this section.

1 of 1956.

Explanation.—The disgorged amount refers to the amount received through disgorgement or disposal of securities.

(4) Any person claiming to be entitled to the amount referred in sub-section (2) may apply to the authority constituted under sub-section (5) for the payment of the money claimed.

(5) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.

(6) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.

(7) The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.

(8) The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India.

(9) It shall be competent for the authority constituted under sub-section (5) to spend money out of the Fund for carrying out the objects specified in sub-section (3).

(10) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.

(11) The authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

126. Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,—

(a) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(b) keep in abeyance in relation to such shares, any offer of rights shares under clause (a) of sub-section (1) of section 62 and any issue of fully paid-up bonus shares in pursuance of first proviso to sub-section (5) of section 123.

Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.

127. Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues:

Punishment
for failure to
distribute
dividends.

Provided that no offence under this section shall be deemed to have been committed:—

- (a) where the dividend could not be paid by reason of the operation of any law;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- (c) where there is a dispute regarding the right to receive the dividend;
- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

CHAPTER IX

ACCOUNTS OF COMPANIES

128. (1) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting:

Books of
account, etc.,
to be kept by
company.

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place:

Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

(2) Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).

(3) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed:

Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors.

(4) Where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

(5) The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order:

Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

(6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Financial
statement.

129. (1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:

Provided that the items contained in such financial statements shall be in accordance with the accounting standards:

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

(a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;

4 of 1938.
41 of 1999.

(b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;

10 of 1949.

(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;

36 of 2003.

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

(2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

(3) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

Explanation.—For the purposes of this sub-section, the word “subsidiary” shall include associate company and joint venture.

(4) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis*, apply to the consolidated financial statements referred to in sub-section (3).

(5) Without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

(6) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Explanation.—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.

130. (1) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

Re-opening of accounts on court's or Tribunal's orders.

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

(2) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.

131. (1) If it appears to the directors of a company that—

(a) the financial statement of the company; or

(b) the report of the Board,

do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Provided that the Tribunal shall give notice to the Central Government and the Income-tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

Voluntary revision of financial statements or Board's report.

(2) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—

(a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and

(b) the making of any necessary consequential alteration.

(3) The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—

(a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;

(b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;

(c) require the directors to take such steps as may be prescribed.

132. (1) The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.

(2) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

(a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

(b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;

(c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and

(d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

(3) The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed:

Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed:

Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment:

Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

(4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

(a) have the power to investigate, either *suo motu* or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

Constitution
of
National
Financial
Reporting
Authority.

5 of 1908.

(b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;

(iv) issuing commissions for examination of witnesses or documents;

(c) where professional or other misconduct is proved, have the power to make order for—

(A) imposing penalty of—

(I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and

(II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;

(B) debarbing the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

38 of 1949.

Explanation.—For the purposes of his sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.

38 of 1949.

(5) Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (c) of sub-section (4), may prefer an appeal before the Appellate Authority constituted under sub-section (6) in such manner as may be prescribed.

(6) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Appellate Authority consisting of a chairperson and not more than two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the National Financial Reporting Authority.

(7) The qualifications for appointment of the chairperson and members of the Appellate Authority, the manner of selection, the terms and conditions of their service and the requirement of the supporting staff and procedure (including places of hearing the appeals, form and manner in which the appeals shall be filed) to be followed by the Appellate Authority shall be such as may be prescribed.

(8) The fee for filing the appeal shall be such as may be prescribed.

(9) The officer authorised by the Appellate Authority shall prepare in such form and at such time as may be prescribed its annual report giving a full account of its activities and forward a copy thereof to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament.

(10) The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

(11) The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

(12) The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.

(13) The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.

(14) The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.

(15) The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

133. The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

38 of 1949.

134. (1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

(2) The auditors' report shall be attached to every financial statement.

(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

- (a) the extract of the annual return as provided under sub-section (3) of section 92;
- (b) number of meetings of the Board;
- (c) Directors' Responsibility Statement;
- (d) a statement on declaration given by independent directors under sub-section (6) of section 149;
- (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;

(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—

- (i) by the auditor in his report; and
- (ii) by the company secretary in practice in his secretarial audit report;
- (g) particulars of loans, guarantees or investments under section 186;
- (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;
- (i) the state of the company's affairs;
- (j) the amounts, if any, which it proposes to carry to any reserves;
- (k) the amount, if any, which it recommends should be paid by way of dividend;
- (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
- (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;

Central
Government
to prescribe
accounting
standards.

Financial
statement,
Board's
report, etc.

(n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

(o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

(q) such other matters as may be prescribed.

(4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

(5) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that—

(a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(d) the directors had prepared the annual accounts on a going concern basis; and

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation.—For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

(6) The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

(7) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

(a) any notes annexed to or forming part of such financial statement;

(b) the auditor's report; and

(c) the Board's report referred to in sub-section (3).

(8) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Corporate
Social
Responsibility.

135. (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (c) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.

Right of
member to
copies of
audited
financial
statement.

136. (1) Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:

Provided that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:

Provided further that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed:

Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:

Provided also that every company having a subsidiary or subsidiaries shall,—

(a) place separate audited accounts in respect of each of its subsidiary on its website, if any;

(b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

(2) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.

(3) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

137. (1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403:

Copy of financial statement to be filed with Registrar.

Provided that where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose:

Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403:

Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year:

Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

(2) Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified, under section 403.

(3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

138. (1) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Internal audit.

(2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

CHAPTER X

AUDIT AND AUDITORS

Appointment
of auditors.

139. (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting:

Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141:

Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Explanation.—For the purposes of this Chapter, “appointment” includes re-appointment.

(2) No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(a) an individual as auditor for more than one term of five consecutive years;
and

(b) an audit firm as auditor for more than two terms of five consecutive years:

Provided that—

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years:

Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act:

Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

(3) Subject to the provisions of this Act, members of a company may resolve to provide that—

(a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or

(b) the audit shall be conducted by more than one auditor.

(4) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).

6 of 2009.

Explanation.—For the purposes of this Chapter, the word “firm” shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

(5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

(6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(7) Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

(8) Any casual vacancy in the office of an auditor shall—

(i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;

(ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days:

Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

(9) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—

(a) he is not disqualified for re-appointment;

(b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and

(c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

(10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

(11) Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

140. (1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Removal,
resignation of
auditor and
giving of
special
notice.

(2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

(3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

(4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.

(ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

(iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company,

and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting:

Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar:

Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting.

(5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either *suo motu* or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors:

Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place:

Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Explanation I.—It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

Explanation II.—For the purposes of this Chapter the word "auditor" includes a firm of auditors.

141. (1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

Eligibility, qualifications and disqualifications of auditors.

Provided that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

(2) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—

(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(b) an officer or employee of the company;

(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;

(d) a person who, or his relative or partner—

(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

(e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

(f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

(h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

(i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

(4) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

142. (1) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein:

Remuneration of auditors.

Provided that the Board may fix remuneration of the first auditor appointed by it.

(2) The remuneration under sub-section (1) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

Powers and
duties of
auditors and
auditing
standards.

143. (1) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely:—

(a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;

(b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

(c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(d) whether loans and advances made by the company have been shown as deposits;

(e) whether personal expenses have been charged to revenue account;

(f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading;

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

(2) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (1) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

(3) The auditor's report shall also state—

(a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;

(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

(d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

(e) whether, in his opinion, the financial statements comply with the accounting standards;

(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

(g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;

(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

(j) such other matters as may be prescribed.

(4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

(5) In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

(6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to,—

(a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and

(b) comment upon or supplement such audit report:

Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

(7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

56 of 1971.

(8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed:

Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

(9) Every auditor shall comply with the auditing standards.

(10) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority:

38 of 1949.

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

(11) The Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

(12) Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

(13) No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.

(14) The provisions of this section shall *mutatis mutandis* apply to—

- (a) the cost accountant in practice conducting cost audit under section 148; or
- (b) the company secretary in practice conducting secretarial audit under section 204.

(15) If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

Auditor not
to render
certain
services.

144. An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:—

- (a) accounting and book-keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;
- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of services as may be prescribed:

Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

Explanation.—For the purposes of this sub-section, the term “directly or indirectly” shall include rendering of services by the auditor,—

(i) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;

(ii) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

Auditor to
sign audit
reports, etc.

145. The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

146. All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

Auditors to attend general meeting.

147. (1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

Punishment for contravention.

(2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees:

Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

(3) Where an auditor has been convicted under sub-section (2), he shall be liable to—

(i) refund the remuneration received by him to the company; and

(ii) pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

(4) The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

(5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

148. (1) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies:

Central Government to specify audit of items of cost in respect of certain companies.

Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

(2) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

(3) The audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed:

Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records:

Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards.

Explanation.—For the purposes of this sub-section, the expression “cost auditing standards” mean such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

23 of 1959.

(4) An audit conducted under this section shall be in addition to the audit conducted under section 143.

(5) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company:

Provided that the report on the audit of cost records shall be submitted by the cost accountant in practice to the Board of Directors of the company.

(6) A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

(7) If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (6), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.

(8) If any default is made in complying with the provisions of this section,—

(a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;

(b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

CHAPTER XI

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

Company to
have Board of
Directors.

149. (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—

(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and

(b) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

(2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).

(3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

(4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

(5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).

(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

(7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).

Explanation.—For the purposes of this section, “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

(8) The company and independent directors shall abide by the provisions specified in Schedule IV.

(9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

(10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

(11) Notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director.

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Explanation.—For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(12) Notwithstanding anything contained in this Act,—

(i) an independent director;

(ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

(13) The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

Manner of selection of independent directors and maintenance of databank of independent directors.

150. (1) Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors:

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

(2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

(3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

(4) The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.

Appointment of director elected by small shareholders.

151. A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

Explanation.—For the purposes of this section “small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

152. (1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

(2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.

(3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.

(4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under this Act.

(5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed:

Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

(6) (a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—

(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and

(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

(b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

(c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

(d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

Explanation.—For the purposes of this sub-section, “total number of directors” shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

(7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;

(ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(v) section 162 is applicable to the case.

Explanation.—For the purposes of this section and section 160, the expression “retiring director” means a director retiring by rotation.

Application
for allotment
of Director
Identification
Number.

153. Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

Allotment of
Director
Identification
Number.

154. The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as may be prescribed.

Prohibition to
obtain more
than one
Director
Identification
Number.

155. No individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number.

Director to
intimate
Director
Identification
Number.

156. Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.

Company to
inform
Director
Identification
Number to
Registrar.

157. (1) Every company shall, within fifteen days of the receipt of intimation under section 156, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fees as may be prescribed or with such additional fees as may be prescribed within the time specified under section 403 and every such intimation shall be furnished in such form and manner as may be prescribed.

(2) If a company fails to furnish Director Identification Number under sub-section (1), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

158. Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

Obligation to indicate Director Identification Number.

159. If any individual or director of a company, contravenes any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

Punishment for contravention.

160. (1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent. of total valid votes cast either on show of hands or on poll on such resolution.

Right of persons other than retiring directors to stand for directorship.

(2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed.

161. (1) The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Appointment of additional director, alternate director and nominee director.

(2) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India:

Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act:

Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India:

Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

(3) Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

(4) In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board:

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Appointment
of directors
to be voted
individually.

162. (1) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

(2) A resolution moved in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved.

(3) A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

Option to
adopt
principle of
proportional
representation
for
appointment
of directors.

163. Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

Disqualifica-
tions
for
appointment
of director.

164. (1) A person shall not be eligible for appointment as a director of a company, if—

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not complied with sub-section (3) of section 152.

(2) No person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect—

(i) for thirty days from the date of conviction or order of disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or

(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off.

165. (1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time:

Number of
directorships.

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation.— For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

(2) Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

(3) Any person holding office as director in companies more than the limits as specified in sub-section (1), immediately before the commencement of this Act shall, within a period of one year from such commencement,—

(a) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director;

(b) resign his office as director in the other remaining companies; and

(c) intimate the choice made by him under clause (a), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.

(4) Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the despatch thereof to the company concerned.

(5) No such person shall act as director in more than the specified number of companies,—

(a) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (b) of sub-section (3); or

(b) after the expiry of one year from the commencement of this Act,

whichever is earlier.

(6) If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.

Duties of
directors.

166. (1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.

(2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(6) A director of a company shall not assign his office and any assignment so made shall be void.

(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

167. (1) The office of a director shall become vacant in case—

Vacation of
office of
director.

(a) he incurs any of the disqualifications specified in section 164;

(b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

(c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;

(e) he becomes disqualified by an order of a court or the Tribunal;

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

(g) he is removed in pursuance of the provisions of this Act;

(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

(2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

(4) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

168. (1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:

Resignation
of
director.

Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

Removal of
directors.

169. (1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company),

and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

(6) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

(7) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

(8) Nothing in this section shall be taken—

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(b) as derogating from any power to remove a director under other provisions of this Act.

170. (1) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

Register of directors and key managerial personnel and their shareholding.

(2) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place.

171. (1) The register kept under sub-section (1) of section 170,—

Members' right to inspect.

(a) shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within thirty days; and

(b) shall also be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting.

(2) If any inspection as provided in clause (a) of sub-section (1) is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.

Punishment.

172. If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

CHAPTER XII

MEETINGS OF BOARD AND ITS POWERS

Meetings of Board.

173. (1) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board:

Provided that the Central Government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

(2) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time:

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

(3) A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

(4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.

(5) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.

174. (1) The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

Quorum for meetings of Board.

(2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

(3) Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.

Explanation.—For the purposes of this sub-section, “interested director” means a director within the meaning of sub-section (2) of section 184.

(4) Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

Explanation.—For the purposes of this section,—

(i) any fraction of a number shall be rounded off as one;

(ii) “total strength” shall not include directors whose places are vacant.

175. (1) No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution:

Passing of resolution by circulation.

Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

(2) A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

176. No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company:

Defects in appointment of directors not to invalidate actions taken.

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

Audit
Committee.

177. (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.

(2) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

(3) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).

(4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include,—

(i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;

(ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;

(iii) examination of the financial statement and the auditors' report thereon;

(iv) approval or any subsequent modification of transactions of the company with related parties;

(v) scrutiny of inter-corporate loans and investments;

(vi) valuation of undertakings or assets of the company, wherever it is necessary;

(vii) evaluation of internal financial controls and risk management systems;

(viii) monitoring the end use of funds raised through public offers and related matters.

(5) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

(6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

(7) The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

(8) The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

(9) Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.

(10) The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases:

Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

178. (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors:

Nomination
and
Remuneration
Committee
and
Stakeholders
Relationship
Committee.

Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

(3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

(4) The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure that—

(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;

(b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

(c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals:

Provided that such policy shall be disclosed in the Board's report.

(5) The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

(6) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

(7) The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

(8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both:

Provided that non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

Explanation.—The expression “senior management” means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.

Powers of
Board.

179. (1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

(3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—

- (a) to make calls on shareholders in respect of money unpaid on their shares;
- (b) to authorise buy-back of securities under section 68;
- (c) to issue securities, including debentures, whether in or outside India;
- (d) to borrow monies;
- (e) to invest the funds of the company;
- (f) to grant loans or give guarantee or provide security in respect of loans;
- (g) to approve financial statement and the Board's report;
- (h) to diversify the business of the company;
- (i) to approve amalgamation, merger or reconstruction;
- (j) to take over a company or acquire a controlling or substantial stake in another company;
- (k) any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.

Explanation I.—Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

Explanation II.—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(4) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in this section.

180. (1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—

Restrictions
on powers of
Board.

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

Explanation.—For the purposes of this clause,—

(i) “undertaking” shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;

(ii) the expression “substantially the whole of the undertaking” in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business:

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

Explanation.—For the purposes of this clause, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

(d) to remit, or give time for the repayment of, any debt due from a director.

(2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total amount up to which monies may be borrowed by the Board of Directors.

(3) Nothing contained in clause (a) of sub-section (1) shall affect—

(a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or

(b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

(4) Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions:

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.

(5) No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

Company to contribute to *bona fide* and charitable funds, etc.

181. The Board of Directors of a company may contribute to *bona fide* charitable and other funds:

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.

Prohibitions and restrictions regarding political contributions.

182. (1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(2) Without prejudice to the generality of the provisions of sub-section (1),—

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a

political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(3) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

(4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation.—For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951.

183. (1) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

Power of Board and other persons to make contributions to national defence fund, etc.

(2) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount relates.

184. (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.

Disclosure of interest by director.

(2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

(3) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(4) If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

(5) Nothing in this section—

(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

(b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.

Loan to
directors,
etc.

185. (1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

Provided that nothing contained in this sub-section shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such

loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Explanation.—For the purposes of this section, the expression “to any other person in whom director is interested” means—

(a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner;

(c) any private company of which any such director is a director or member;

(d) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

186. (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:

Loan and investment by company.

Provided that the provisions of this sub-section shall not affect,—

(i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;

(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

(2) No company shall directly or indirectly —

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

(3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

(4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

(5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained:

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

(6) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.

15 of 1992.

(7) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

(8) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

(9) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

(10) The register referred to in sub-section (9) shall be kept at the registered office of the company and —

(a) shall be open to inspection at such office; and

(b) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(b) to any acquisition—

(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:

Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;

(ii) made by a company whose principal business is the acquisition of securities;

(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

(12) The Central Government may make rules for the purposes of this section.

(13) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Explanation.—For the purposes of this section,—

(a) the expression “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities;

(b) the expression “infrastructure facilities” means the facilities specified in Schedule VI.

187. (1) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name:

Investments
of company
to be held in
its own name.

Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

(2) Nothing in this section shall be deemed to prevent a company—

(a) from depositing with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or

(b) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof;

Provided that if within a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a scheduled bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the expiry of that period, have the shares or securities re-transferred to it from the State Bank of India or the scheduled bank or, as the case may be, again hold the shares or securities in its own name; or

(c) from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it;

(d) from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

(3) Where in pursuance of clause (d) of sub-section (2), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

(4) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Related party transactions.

188. (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

(a) sale, purchase or supply of any goods or materials;

(b) selling or otherwise disposing of, or buying, property of any kind;

(c) leasing of property of any kind;

(d) availing or rendering of any services;

(e) appointment of any agent for purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(g) underwriting the subscription of any securities or derivatives thereof, of the company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution:

Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Explanation.— In this sub-section,—

(a) the expression “office or place of profit” means any office or place—

(i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(b) the expression “arm's length transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

(2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

(3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

(4) Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

(5) Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—

(i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and

(ii) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

Register of contracts or arrangements in which directors are interested.

189. (1) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

(2) Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.

(3) The register referred to in sub-section (1) shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.

(4) The register to be kept under this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

(5) Nothing contained in sub-section (1) shall apply to any contract or arrangement—

(a) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or

(b) by a banking company for the collection of bills in the ordinary course of its business.

(6) Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.

Contract of employment with managing or whole-time directors.

190. (1) Every company shall keep at its registered office,—

(a) where a contract of service with a managing or whole-time director is in writing, a copy of the contract; or

(b) where such a contract is not in writing, a written memorandum setting out its terms.

(2) The copies of the contract or the memorandum kept under sub-section (1) shall be open to inspection by any member of the company without payment of fee.

(3) If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.

(4) The provisions of this section shall not apply to a private company.

191. (1) No director of a company shall, in connection with—

(a) the transfer of the whole or any part of any undertaking or property of the company; or

(b) the transfer to any person of all or any of the shares in a company being a transfer resulting from—

(i) an offer made to the general body of shareholders;

(ii) an offer made by or on behalf of some other body corporate with a view to a company becoming a subsidiary company of such body corporate or a subsidiary company of its holding company;

(iii) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company; or

(iv) any other offer which is conditional on acceptance to a given extent, receive any payment by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement from such company or from the transferee of such undertaking or property, or from the transferees of shares or from any other person, not being such company, unless particulars as may be prescribed with respect to the payment proposed to be made by such transferee or person, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.

(2) Nothing in sub-section (1) shall affect any payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement subject to limits or priorities, as may be prescribed.

(3) If the payment under sub-section (1) or sub-section (2) is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.

(4) Where a director of a company receives payment of any amount in contravention of sub-section (1) or the proposed payment is made before it is approved in the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.

(5) If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(6) Nothing in this section shall be taken to prejudice the operation of any law requiring disclosure to be made with respect to any payment received under this section or such other like payments made to a director.

Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.

Restriction on
non-cash
transactions
involving
directors.

192. (1) No company shall enter into an arrangement by which—

(a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or

(b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected,

unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

(2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

(3) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless—

(a) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or

(b) any rights are acquired *bona fide* for value and without notice of the contravention of the provisions of this section by any other person.

Contract by
One Person
Company.

193. (1) Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract:

Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business.

(2) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (1) within a period of fifteen days of the date of approval by the Board of Directors.

Prohibition
on
forward
dealings in
securities of
company by
director or
key
managerial
personnel.

194. (1) No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company—

(a) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or

(b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

(2) If a director or any key managerial personnel of the company contravenes the provisions of sub-section (1), such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (1), he shall, subject to the provisions contained in sub-section (2), be liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors.

Explanation.—For the purposes of this section, “relevant shares” and “relevant debentures” mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial personnel or shares and debentures of its holding and subsidiary companies.

195. (1) No person including any director or key managerial personnel of a company shall enter into insider trading:

Prohibition
on
insider
trading
of securities.

Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

Explanation.—For the purposes of this section,—

(a) “insider trading” means—

(i) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or

(ii) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

(b) “price-sensitive information” means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

(2) If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

CHAPTER XIII

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

196. (1) No company shall appoint or employ at the same time a managing director and a manager.

Appointment
of managing
director,
whole-time
director or
manager.

(2) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time:

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

(3) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —

(a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

(b) is an undischarged insolvent or has at any time been adjudged as an insolvent;

(c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or

(d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

(4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule:

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.

(5) Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

197. (1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,—

(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;

(B) three per cent. of the net profits in any other case.

(2) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).

(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government.

- (4) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and
- 5 the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—

(a) the services rendered are of a professional nature; and

(b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

- (5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed:

Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

- (6) A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

(7) Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

- (8) The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.

- (10) The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless permitted by the Central Government.

(11) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.

- (12) Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.

(13) Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in

relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel:

Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

(14) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.

(15) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Calculation of profits.

198. (1) In computing the net profits of a company in any financial year for the purpose of section 197,---

(a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and

(b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.

(2) In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

(3) In making the computation aforesaid, credit shall not be given for the following sums, namely:---

(a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;

(b) profits on sales by the company of forfeited shares;

(c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;

(d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:

Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written-down value;

(e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

(4) In making the computation aforesaid, the following sums shall be deducted, namely:—

- (a) all the usual working charges;
- (b) directors' remuneration;
- (c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;
- (d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;
- (e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;
- (f) interest on debentures issued by the company;
- (g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;
- (h) interest on unsecured loans and advances;
- (i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;
- (j) outgoings inclusive of contributions made under section 181;
- (k) depreciation to the extent specified in section 123;
- (l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;
- (m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;
- (n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);
- (o) debts considered bad and written off or adjusted during the year of account.

(5) In making the computation aforesaid, the following sums shall not be deducted, namely:—

- (a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);
- (b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);
- (c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;
- (d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

Recovery of remuneration in certain cases.

199. Without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made thereunder, the company shall recover from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.

Central Government or company to fix limit with regard to remuneration.

200. Notwithstanding anything contained in this Chapter, the Central Government or a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government or the company shall have regard to—

- (a) the financial position of the company;
- (b) the remuneration or commission drawn by the individual concerned in any other capacity;
- (c) the remuneration or commission drawn by him from any other company;
- (d) professional qualifications and experience of the individual concerned;
- (e) such other matters as may be prescribed.

Forms of, and procedure in relation to, certain applications.

201. (1) Every application made to the Central Government under this Chapter shall be in such form as may be prescribed.

(2) (a) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(b) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(c) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

Compensation for loss of office of managing or whole-time director or manager.

202. (1) A company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

(2) No payment shall be made under sub-section (1) in the following cases, namely:—

(a) where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate,

and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;

(b) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(c) where the office of the director is vacated under sub-section (1) of section 167;

(d) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director;

(e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and

(f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

(3) Any payment made to a managing or whole-time director or manager in pursuance of sub-section (1) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period:

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.

(4) Nothing in this section shall be deemed to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity.

203. (1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

Appointment
of key
managerial
personnel.

(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(ii) company secretary; and

(iii) Chief Financial Officer:

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

(a) the articles of such a company provide otherwise; or

(b) the company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

(5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

Secretarial
audit for
bigger
companies.

204. (1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.

(2) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

(3) The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1).

(4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Functions of
company
secretary.

205. (1) The functions of the company secretary shall include,—

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

Explanation.—For the purpose of this section, the expression "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

56 of 1980.

(2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.

CHAPTER XIV

INSPECTION, INQUIRY AND INVESTIGATION

206. (1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—

Power to call for information, inspect books and conduct inquiries.

(a) to furnish in writing such information or explanation; or

(b) to produce such documents,

within such reasonable time, as may be specified in the notice.

(2) On the receipt of a notice under sub-section (1), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar:

Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

(3) If no information or explanation is furnished to the Registrar within the time specified under sub-section (1) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:

Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.

(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section:

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

(5) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.

(6) The Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies.

(7) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.

Conduct of
inspection and
inquiry.

207. (1) Where a Registrar or inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection.

(2) The Registrar or inspector, making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be,—

(a) make or cause to be made copies of books of account and other books and papers; or

(b) place or cause to be placed any marks of identification in such books in token of the inspection having been made.

(3) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;

(b) summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place.

(4) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

Report on
inspection
made.

208. The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

Search and
seizure.

209. (1) Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personnel or any director or auditor or company secretary in practice if the company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,—

(a) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and

(b) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.

(2) The Registrar or inspector shall return the books and papers seized under subsection (1), as soon as may be, and in any case not later than one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized:

Provided that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again:

Provided further that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.

2 of 1974.

(3) The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, *mutatis mutandis*, to every search and seizure made under this section.

210. (1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—

Investigation
into affairs of
company.

(a) on the receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or

(c) in public interest,

it may order an investigation into the affairs of the company.

(2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

(3) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

211. (1) The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company:

Establishment
of
Serious Fraud
Investigation
Office.

Provided that until the Serious Fraud Investigation Office is established under subsection (1), the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section.

(2) The Serious Fraud Investigation Office shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in,—

(i) banking;

(ii) corporate affairs;

(iii) taxation;

(iv) forensic audit;

(v) capital market;

(vi) information technology;

(vii) law; or

(viii) such other fields as may be prescribed.

(3) The Central Government shall, by notification, appoint a Director in the Serious Fraud Investigation Office, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.

(4) The Central Government may appoint such experts and other officers and employees in the Serious Fraud Investigation Office as it considers necessary for the efficient discharge of its functions under this Act.

(5) The terms and conditions of service of Director, experts, and other officers and employees of the Serious Fraud Investigation Office shall be such as may be prescribed.

Investigation
into affairs of
Company by
Serious Fraud
Investigation
Office.

212. (1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government,

the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

2 of 1974.

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

2 of 1974.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction;

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

2 of 1974.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.

1 of 1956.

(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.

Investigation
into
company's
affairs in
other cases.

213. The Tribunal may,—

(a) on an application made by—

(i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

(ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital,

and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

order; after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud,

then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

214. Where an investigation is ordered by the Central Government in pursuance of clause (b) of sub-section (1) of section 210, or in pursuance of an order made by the Tribunal under section 213, the Central Government may before appointing an inspector under sub-section (3) of section 210 or clause (b) of section 213, require the applicant to give such security not exceeding twenty-five thousand rupees as may be prescribed; as it may think fit, for payment of the costs and expenses of the investigation and such security shall be refunded to the applicant if the investigation results in prosecution.

Security for payment of costs and expenses of investigation.

215. No firm, body corporate or other association shall be appointed as an inspector.

Firm, body corporate or association not to be appointed as inspector.

216. (1) Where it appears to the Central Government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons—

Investigation of ownership of company.

(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(b) who are or have been able to control or to materially influence the policy of the company.

(2) Without prejudice to its powers under sub-section (1), the Central Government shall appoint one or more inspectors under that sub-section, if the Tribunal, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes specified in sub-section (1).

(3) While appointing an inspector under sub-section (1), the Central Government may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.

(4) Subject to the terms of appointment of an inspector, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation.

217. (1) It shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person—

Procedure, powers, etc., of inspectors.

(a) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspector may require any body corporate, other than a body corporate referred to in sub-section (1), to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(3) The inspector shall not keep in his custody any books and papers produced under sub-section (1) or sub-section (2) for more than one hundred and eighty days and return the

same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced:

Provided that the books and papers may be called for by the inspector if they are needed again for a further period of one hundred and eighty days by an order in writing.

(4) An inspector may examine on oath---

(a) any of the persons referred to in sub-section (1); and

(b) with the prior approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally:

Provided that in case of an investigation under section 212, the prior approval of Director, Serious Fraud Investigation Office shall be sufficient under clause (b).

(5) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government, making an investigation under this Chapter shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;

(b) summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place.

(6) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

(7) The notes of any examination under sub-section (4) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) If any person fails without reasonable cause or refuses—

(a) to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty under sub-section (1) or sub-section (2) to produce;

(b) to furnish any information which is his duty under sub-section (2) to furnish;

(c) to appear before the inspector personally when required to do so under sub-section (4) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.

(9) The officers of the Central Government, State Government, police or statutory authority shall provide assistance to the inspector for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require.

(10) The Central Government may enter into an agreement with the Government of a foreign State for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that State and may, by notification, render the application of this Chapter in relation to a foreign State with which reciprocal arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that State.

2 of 1974.

(11) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 if, in the course of an investigation into the affairs of the company, an application is made to the competent court in India by the inspector stating that evidence is, or may be, available in a country or place outside India, such court may issue a letter of request to a court or an authority in such country or place, competent to deal with such request; to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request:

Provided that the letter of request shall be transmitted in such manner as the Central Government may specify in this behalf:

Provided further that every statement recorded or document or thing received under this sub-section shall be deemed to be the evidence collected during the course of investigation.

(12) Upon receipt of a letter of request from a court or an authority in a country or place outside India, competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to affairs of a company under investigation in that country or place, the Central Government may, if it thinks fit, forward such letter of request to the court concerned, which shall thereupon summon the person before it and record his statement or cause any document or thing to be produced, or send the letter to any inspector for investigation, who shall thereupon investigate into the affairs of company in the same manner as the affairs of a company are investigated under this Act and the inspector shall submit the report to such court within thirty days or such extended time as the court may allow for further action:

Provided that the evidence taken or collected under this sub-section or authenticated copies thereof or the things so collected shall be forwarded by the court, to the Central Government for transmission, in such manner as the Central Government may deem fit, to the court or the authority in country or place outside India which had issued the letter of request.

218. (1) Notwithstanding anything contained in any other law for the time being in force, if—

Protection of
employees
during
investigation.

(a) during the course of any investigation of the affairs and other matters of or relating to a company, other body corporate or person under section 210, section 212, section 213 or section 219 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, other body corporate or person, under section 216; or

(b) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI,

such company, other body corporate or person proposes—

(i) to discharge or suspend any employee; or

(ii) to punish him, whether by dismissal, removal, reduction in rank or otherwise;

or

(iii) to change the terms of employment to his disadvantage,

the company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.

(2) If the company, other body corporate or person concerned does not receive within thirty days of making of application under sub-section (1), the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.

(3) If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of such fees as may be prescribed.

(4) The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

(5) For the removal of doubts, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

Power of
inspector to
conduct
investigation
into affairs of
related
companies,
etc.

219. If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of—

(a) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;

(b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;

(c) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or

(d) any person who is or has at any relevant time been the company's managing director or manager or employee,

he shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

Seizure of
documents by
inspector.

220. (1) Where in the course of an investigation under this Chapter, the inspector has reasonable grounds to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector may—

(a) enter, with such assistance as may be required, the place or places where such books and papers are kept in such manner as may be required; and

(b) seize books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books and papers at its cost for the purposes of his investigation.

(2) The inspector shall keep in his custody the books and papers seized under this section for such a period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized:

Provided that the inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such manner as he considers necessary.

2 of 1974.

(3) The provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures shall apply *mutatis mutandis* to every search or seizure made under this section.

221. (1) Where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (1) of section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

Freezing of assets of company on inquiry and investigation.

(2) In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

222. (1) Where it appears to the Tribunal, in connection with any investigation under section 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.

Imposition of restrictions upon securities.

(2) Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

223. (1) An inspector appointed under this Chapter may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.

Inspector's report.

(2) Every report made under sub-section (1) shall be in writing or printed as the Central Government may direct.

(3) A copy of the report made under sub-section (1) may be obtained by making an application in this regard to the Central Government.

(4) The report of any inspector appointed under this Chapter shall be authenticated either—

(a) by the seal of the company whose affairs have been investigated; or

(b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872,

1 of 1872.

and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

(5) Nothing in this section shall apply to the report referred to in section 212.

Actions to be taken in pursuance of inspector's report.

224. (1) If, from an inspector's report, made under section 223, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated under this Chapter been guilty of any offence for which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.

(2) If any company or other body corporate is liable to be wound up under this Act and it appears to the Central Government from any such report made under section 223 that it is expedient so to do by reason of any such circumstances as are referred to in section 213, the Central Government may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf—

(a) a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up;

(b) an application under section 241; or

(c) both.

(3) If from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated under this Chapter—

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or

(b) for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained,

the Central Government may itself bring proceedings for winding up in the name of such company or body corporate.

(4) The Central Government, shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (3).

(5) Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

225. (1) The expenses of, and incidental to, an investigation by an inspector appointed by the Central Government under this Chapter other than expenses of inspection under section 214 shall be defrayed in the first instance by the Central Government, but shall be reimbursed by the following persons to the extent mentioned below, namely:—

Expenses of investigation.

(a) any person who is convicted on a prosecution instituted, or who is ordered to pay damages or restore any property in proceedings brought, under section 224, to the extent that he may in the same proceedings be ordered to pay the said expenses as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;

(b) any company or body corporate in whose name proceedings are brought as aforesaid, to the extent of the amount or value of any sums or property recovered by it as a result of such proceedings;

(c) unless, as a result of the investigation, a prosecution is instituted under section 224,—

(i) any company, body corporate, managing director or manager dealt with by the report of the inspector; and

(ii) the applicants for the investigation, where the inspector was appointed under section 213,

to such extent as the Central Government may direct.

(2) Any amount for which a company or body corporate is liable under clause (b) of sub-section (1) shall be a first charge on the sums or property mentioned in that clause.

226. An investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

Voluntary winding up of company, etc., not to stop investigation proceedings.

(a) an application has been made under section 241;

(b) the company has passed a special resolution for voluntary winding up;

or

(c) any other proceeding for the winding up of the company is pending before the Tribunal:

Provided that where a winding up order is passed by the Tribunal in a proceeding referred to in clause (c), the inspector shall inform the Tribunal about the pendency of the investigation proceedings before him and the Tribunal shall pass such order as it may deem fit:

Provided further that nothing in the winding up order shall absolve any director or other employee of the company from participating in the proceedings before the inspector or any liability as a result of the finding by the inspector:

227. Nothing in this Chapter shall require the disclosure to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government—

Legal advisers and bankers not to disclose certain information.

(a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by the bankers of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person.

Investigation,
etc., of
foreign
companies.

228. The provisions of this Chapter shall apply *mutatis mutandis* to inspection, inquiry or investigation in relation to foreign companies.

Penalty for
furnishing
false
statement,
mutilation,
destruction of
documents.

229. Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

(a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;

(b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or

(c) provides an explanation which is false or which he knows to be false,
he shall be punishable for fraud in the manner as provided in section 447.

CHAPTER XV

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

Power to
compromise
or make
arrangements
with creditors
and members.

230. (1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.—For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(2) The company or any other person, by whom an application is made under sub-section (1), shall disclose to the Tribunal by affidavit—

(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—

(i) a creditor's responsibility statement in the prescribed form;

(ii) safeguards for the protection of other secured and unsecured creditors;

(iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;

(iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and

(v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

12 of 2003.

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

(7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) the protection of any class of creditors;

(c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;

(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;

1 of 1986.

(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

(10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

(11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

231. (1) Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—

(a) shall have power to supervise the implementation of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

(2) If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.

Power of
Tribunal to
enforce
compromise
or
arrangement.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

232. (1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal:—

Merger and
amalgamation
of companies.

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies,

the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply *mutatis mutandis*.

(2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—

(a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;

(b) confirmation that a copy of the draft scheme has been filed with the Registrar;

(c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(d) the report of the expert with regard to valuation, if any;

(e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

(3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on

its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) dissolution, without winding-up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

(g) the transfer of the employees of the transferor company to the transferee company;

(h) where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and

(j) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(4) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

(5) Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.

(6) The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

(7) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation.—For the purposes of this section,—

(i) in a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;

(ii) references to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;

(iii) a scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and

(iv) property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

233. (1) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:—

Merger or
amalgamation
of certain
companies.

(a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;

(b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;

(c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and

(d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

(2) The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.

(3) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.

(4) If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days:

Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme.

(5) If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under sub-section (2) stating its objections and requesting that the Tribunal may consider the scheme under section 232.

(6) On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit:

Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.

(7) A copy of the order under sub-section (6) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.

(8) The registration of the scheme under sub-section (3) or sub-section (7) shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.

(9) The registration of the scheme shall have the following effects, namely:—

(a) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company;

(b) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;

(c) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and

(d) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

(10) A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.

(11) The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital:

Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.

(12) The provisions of this section shall *mutatis mutandis* apply to a company or companies specified in sub-section (1) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to clause (b) of sub-section (1) of section 232.

(13) The Central Government may provide for the merger or amalgamation of companies in such manner as may be prescribed.

(14) A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

234. (1) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply *mutatis mutandis* to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government:

Merger or amalgamation of company with foreign company.

Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.

(2) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or *vice versa* and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

Explanation.—For the purposes of sub-section (2), the expression “foreign company” means any company or body corporate incorporated outside India whether having a place of business in India or not.

235. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

(2) Where a notice under sub-section (1) is given, the transferee company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order

otherwise, be entitled to, and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(3) Where a notice has been given by the transferee company under sub-section (1) and the Tribunal has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Tribunal by the dissenting shareholder is then pending, after that application has been disposed of, send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferor company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company shall—

(a) thereupon register the transferee company as the holder of those shares; and

(b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.

(4) Any sum received by the transferor company under this section shall be paid into a separate bank account; and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.

(5) In relation to an offer made by a transferee company to shareholders of a transferor company before the commencement of this Act, this section shall have effect with the following modifications, namely:—

(a) in sub-section (1), for the words “the shares whose transfer is involved other than shares already held at the date of the offer by, or by a nominee of, the transferee company or its subsidiaries,” the words “the shares affected” shall be substituted; and

(b) in sub-section (3), the words “together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company” shall be omitted.

Explanation.—For the purposes of this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

Purchase of
minority
shareholding.

236. (1) In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent. majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.

(2) The acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such

shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.

(3) Without prejudice to the provisions of sub-sections (1) and (2), the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with such rules as may be prescribed under sub-section (2).

(4) The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (2) or sub-section (3), as the case may be, in a separate bank account to be operated by the transferor company for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days:

Provided that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty days, fail to receive or claim payment arising out of such disbursement.

(5) In the event of a purchase under this section, the transferor company shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.

(6) In the absence of a physical delivery of shares by the shareholders within the time specified by the company, the share certificates shall be deemed to be cancelled, and the transferor company shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (4) by the majority in advance to the minority by despatch of such payment.

(7) In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.

(8) Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, the shareholders holding seventy-five per cent. or more minority equity shareholding negotiate or reach an understanding on a higher price for any transfer, proposed or agreed upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the majority shareholders shall share the additional compensation so received by them with such minority shareholders on a *pro rata* basis.

Explanation.—For the purposes of this section, the expressions “acquirer” and “person acting in concert” shall have the meanings respectively assigned to them in clause (b) and clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(9) When a shareholder or the majority equity shareholder fails to acquire full purchase of the shares of the minority equity shareholders, then, the provisions of this section shall continue to apply to the residual minority equity shareholders, even though,—

(a) the shares of the company of the residual minority equity shareholder had been delisted; and

(b) the period of one year or the period specified in the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, had elapsed.

15 of 1992.

Power of
Central
Government
to provide
for
amalgamation
of companies
in public
interest.

237. (1) Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.

(2) The order under sub-section (1) may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

(3) Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.

(4) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within a period of thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.

(5) No order shall be made under this section unless—

(a) a copy of the proposed order has been sent in draft to each of the companies concerned;

(b) the time for preferring an appeal under sub-section (4) has expired, or where any such appeal has been preferred, the appeal has been finally disposed off; and

(c) the Central Government has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

(6) The copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

238. (1) In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—

Registration of offer of schemes involving transfer of shares.

(a) every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as may be prescribed;

(b) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and

(c) every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered:

Provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

(2) An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (1).

(3) The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

239. The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

Preservation of books and papers of amalgamated companies.

240. Notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

Liability of officers in respect of offences committed prior to merger, amalgamation, etc.

CHAPTER XVI

PREVENTION OF OPPRESSION AND MISMANAGEMENT

241. (1) Any member of a company who complains that—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

Application to Tribunal for relief in cases of oppression, etc.

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of

the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

Powers of
Tribunal.

242. (1) If, on any application made under section 241, the Tribunal is of the opinion—

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e);

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

243. (1) Where an order made under section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section,--

Consequence
of termina-
tion or
modification
of certain
agreements.

(a) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;

(b) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company;

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

(2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1), and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

Right to
apply under
section 241.

244. (1) The following members of a company shall have the right to apply under section 241, namely:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

Class action.

245. (1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:—

(a) to restrain the company from committing an act which is *ultra vires* the articles or memorandum of the company;

(b) to restrain the company from committing breach of any provision of the company's memorandum or articles;

(c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;

(d) to restrain the company and its directors from acting on such resolution;

(e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;

(f) to restrain the company from taking action contrary to any resolution passed by the members;

(g) to claim damages or compensation or demand any other suitable action from or against—

(i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;

(ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or

(iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

(h) to seek any other remedy as the Tribunal may deem fit.

(2) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

(3) (i) The requisite number of members provided in sub-section (1) shall be as under:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(ii) The requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

(4) In considering an application under sub-section (1), the Tribunal shall take into account, in particular—

(a) whether the member or depositor is acting in good faith in making the application for seeking an order;

(b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of sub-section (1);

(c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;

(d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;

(e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—

(i) authorised by the company before it occurs; or

(ii) ratified by the company after it occurs;

(f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

(5) If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:—

(a) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;

(b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;

(c) two class action applications for the same cause of action shall not be allowed;

(d) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.

(6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.

(7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

(9) Nothing contained in this section shall apply to a banking company.

(10) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (1).

246. The provisions of sections 337 to 341 (both inclusive) shall apply *mutatis mutandis*, in relation to an application made to the Tribunal under section 241 or section 245.

Application of certain provisions to proceedings under section 241 or section 245.

CHAPTER XVII

REGISTERED VALUERS

Valuation by registered valuers.

247. (1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

(2) The valuer appointed under sub-section (1) shall,—

(a) make an impartial, true and fair valuation of any assets which may be required to be valued;

(b) exercise due diligence while performing the functions as valuer;

(c) make the valuation in accordance with such rules as may be prescribed; and

(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

(3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees:

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(4) Where a valuer has been convicted under sub-section (3), he shall be liable to—

(i) refund the remuneration received by him to the company; and

(ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

CHAPTER XVIII

REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

248. (1) Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation;

(b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(3) Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

249. (1) An application under sub-section (2) of section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

(a) has changed its name or shifted its registered office from one State to another;

Power of Registrar to remove name of company from register of companies.

Restrictions on making application under section 248 in certain situations.

(b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX, whether voluntarily or by the Tribunal.

(2) If a company files an application under sub-section (2) of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees.

(3) An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.

Effect of
company
notified as
dissolved.

250. Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

Fraudulent
application
for removal
of name.

251. (1) Where it is found that an application by a company under sub-section (2) of section 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—

(a) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and

(b) be punishable for fraud in the manner as provided in section 447.

(2) Without prejudice to the provisions contained in sub-section (1), the Registrar may also recommend prosecution of the persons responsible for the filing of an application under sub-section (2) of section 248.

Appeal to
Tribunal.

252. (1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned :

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

CHAPTER XIX

REVIVAL AND REHABILITATION OF SICK COMPANIES

253. (1) Where on a demand by the secured creditors of a company representing fifty per cent. or more of its outstanding amount of debt, the company has failed to pay the debt within a period of thirty days of the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors, any secured creditor may file an application to the Tribunal in the prescribed manner along with the relevant evidence for such default, non-repayment or failure to offer security or compound it, for a determination that the company be declared as a sick company.

Determination
of sickness.

(2) The applicant under sub-section (1) may, along with an application under that sub-section or at any stage of the proceedings thereafter, make an application for the stay of any proceeding for the winding up of the company or for execution, distress or the like against any property and assets of the company or for the appointment of a receiver in respect thereof and that no suit for the recovery of any money or for the enforcement of any security against the company shall lie or be proceeded with.

(3) The Tribunal may pass an order in respect of an application under sub-section (2) which shall be operative for a period of one hundred and twenty days.

(4) The company referred to in sub-section (1) may also file an application to the Tribunal on one or more of the grounds specified in sub-sections (1) and (2) above.

(5) Without prejudice to the provisions of sub-sections (1) to (4), the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any company has become, for the purposes of this Act, a sick company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company:

Provided that a reference shall not be made under this sub-section in respect of any company by—

(a) the Government of any State unless all or any of the undertakings belonging to such company are situated in such State;

(b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.

(6) Where an application under sub-section (1) or sub-section (4) has been filed,—

(a) the company shall not dispose of or otherwise enter into any obligation with regard to, its properties or assets except as required in the normal course of business;

(b) the Board of Directors shall not take any steps likely to prejudice the interests of the creditors.

(7) The Tribunal shall, within a period of sixty days of the receipt of an application under sub-section (1) or sub-section (4), determine whether the company is a sick company or not:

Provided that no such determination shall be made in respect of an application under sub-section (1) unless the company has been given notice of the application and a reasonable opportunity to reply to the notice within thirty days of the receipt thereof.

(8) If the Tribunal is satisfied that a company has become a sick company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make the repayment of its debts referred to in sub-section (1) within a reasonable time.

(9) If the Tribunal deems fit under sub-section (8) that it is practicable for a sick company to pay its debts referred to in that sub-section within a reasonable time, the Tribunal

shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make repayment of the debt.

Application
for revival
and
rehabilitation.

254. (1) On the determination of a company as a sick company by the Tribunal under section 253, any secured creditor of that company or the company may make an application to the Tribunal for the determination of the measures that may be adopted with respect to the revival and rehabilitation of such company:

Provided that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted, such reference shall abate if the secured creditors representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:

54 of 2002.

Provided further that no reference shall be made under this section if the secured creditors representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:

54 of 2002.

Provided also that where the financial assets of the sick company had been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, no such application shall be made without the consent of securitisation company or reconstruction company which has acquired such assets.

54 of 2002.

(2) An application under sub-section (1) shall be accompanied by—

(a) audited financial statements of the company relating to the immediately preceding financial year;

(b) such particulars and documents, duly authenticated in such manner, along with such fees as may be prescribed; and

(c) a draft scheme of revival and rehabilitation of the company in such manner as may be prescribed:

Provided that where the sick company has no draft scheme of revival and rehabilitation to offer, it shall file a declaration to that effect along with the application.

(3) An application under sub-section (1) shall be made to the Tribunal within a period of sixty days from the date of determination of the company as a sick company by the Tribunal under section 253.

Exclusion of
certain time
in computing
period of
limitation.

255. Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a company for which an application has been made to the Tribunal under sub-section (1) of section 253, for a determination to be declared as a sick company or at any stage thereafter, the period during which the stay order as provided under sub-section (3) of section 253, was applicable shall be excluded.

36 of 1963.

Appointment
of interim
administrator.

256. (1) On the receipt of an application under section 254, the Tribunal shall, not later than seven days from such receipt,—

(a) fix a date for hearing not later than ninety days from date of its receipt;

(b) appoint an interim administrator to convene a meeting of creditors of the company in accordance with the provisions of section 257 to be held not later than forty-five days from receipt of the order of the Tribunal appointing him to consider whether on the basis of the particulars and documents furnished with the application made under section 254, the draft scheme, if any, filed along with such application or otherwise and any other material available, it is possible to revive and rehabilitate the

sick company and such other matters, which the interim administrator may consider necessary for the purpose and to submit his report to the Tribunal within sixty days from the date of the order:

Provided that where no draft scheme is filed by the company and a declaration has been made to that effect by the Board of Directors, the Tribunal may direct the interim administrator to take over the management of the company; and

(c) issue such other directions to the interim administrator as the Tribunal may consider necessary to protect and preserve the assets of the sick company and for its proper management.

(2) Where an interim administrator has been directed to take over the management of the company, the directors and the management of the company shall extend all possible assistance and cooperation to the interim administrator to manage the affairs of the company.

257. (1) The interim administrator shall appoint a committee of creditors with such number of members as he may determine, but not exceeding seven, and as far as possible a representative each of every class of creditors should be represented in that committee.

Committee of
creditors.

(2) The holding of the meeting of the committee of creditors and the procedure to be followed at such meetings, including the appointment of its chairperson, shall be decided by the interim administrator.

(3) The interim administrator may direct any promoter, director or any key managerial personnel to attend any meeting of the committee of creditors and to furnish such information as may be considered necessary by the interim administrator.

258. On the date of hearing fixed by the Tribunal and on consideration of the report of the interim administrator filed under sub-section (1) of section 256, if the Tribunal is satisfied that the creditors representing three-fourths in value of the amount outstanding against the sick company present and voting have resolved that—

Order of
Tribunal.

(a) it is not possible to revive and rehabilitate such company, the Tribunal shall record such opinion and order that the proceedings for the winding up of the company be initiated; or

(b) by adopting certain measures the sick company may be revived and rehabilitated, the Tribunal shall appoint a company administrator for the company and cause such administrator to prepare a scheme of revival and rehabilitation of the sick company:

Provided that the Tribunal may, if it thinks fit, appoint an interim administrator as the company administrator.

259. (1) The interim administrator or the company administrator, as the case may be, shall be appointed by the Tribunal from a databank maintained by the Central Government or any institute or agency authorised by the Central Government in a manner as may be prescribed consisting of the names of company secretaries, chartered accountants, cost accountants and such other professionals as may, by notification, be specified by the Central Government.

Appointment
of
administrator.

(2) The terms and conditions of the appointment of interim and company administrators shall be such as may be ordered by the Tribunal:

(3) The Tribunal may direct the company administrator to take over the assets or management of the company and for the purpose of assisting him in the management of the company, the company administrator may, with the approval of the Tribunal, engage the services of suitable expert or experts.

Powers and
duties of
company
administrator.

260. (1) The company administrator shall perform such functions as the Tribunal may direct.

(2) Without prejudice to the provisions of sub-section (1), the company administrator may cause to be prepared with respect to the company—

(a) a complete inventory of—

(i) all assets and liabilities of whatever nature;

(ii) all books of account, registers, maps, plans, records, documents of title and all other documents of whatever nature;

(b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;

(c) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of any industrial undertaking of the company or for the fixation of the lease rent or share exchange ratio;

(d) an estimate of the reserve price, lease rent or share exchange ratio;

(e) proforma accounts of the company, where no up-to-date audited accounts are available; and

(f) a list of workmen of the company and their dues referred to in sub-section (3) of section 325.

Scheme of
revival and
rehabilitation.

261. (1) The company administrator shall prepare or cause to be prepared a scheme of revival and rehabilitation of the sick company after considering the draft scheme filed along with the application under section 254.

(2) A scheme prepared in relation to any sick company under sub-section (1) may provide for any one or more of the following measures, namely:—

(a) the financial reconstruction of the sick company;

(b) the proper management of the sick company by any change in, or by taking over, the management of such company;

(c) the amalgamation of—

(i) the sick company with any other company; or

(ii) any other company with the sick company;

(d) takeover of the sick company by a solvent company;

(e) the sale or lease of a part or whole of any asset or business of the sick company;

(f) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;

(g) such other preventive, ameliorative and remedial measures as may be appropriate;

(h) repayment or rescheduling or restructuring of the debts or obligations of the sick company to any of its creditors or class of creditors;

(i) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (h).

Sanction of
scheme.

262. (1) The scheme prepared by the company administrator under section 261 shall be placed before the creditors of the sick company in a meeting convened for their approval by the company administrator within the period of sixty days from his appointment, which may be extended by the Tribunal up to a period not exceeding one hundred twenty days.

(2) The company administrator shall convene separate meetings of secured and unsecured creditors of the sick company and if the scheme is approved by the unsecured creditors representing one-fourth in value of the amount owed by the company to such creditors and the secured creditors, representing three-fourths in value of the amount outstanding against financial assistance disbursed by such creditors to the sick company, the company administrator shall submit the scheme before the Tribunal for sanctioning the scheme:

Provided that where the scheme relates to amalgamation of the sick company with any other company, such scheme shall, in addition to the approval of the creditors of the sick company under this sub-section, be laid before the general meeting of both the companies for approval by their respective shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of that company.

(3) (i) The scheme prepared by the company administrator shall be examined by the Tribunal and a copy of the scheme with modification, if any, made by the Tribunal shall be sent, in draft, to the sick company and the company administrator and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published the draft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify.

(ii) The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement.

(iii) The Tribunal may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick company and the company administrator and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies.

(4) On the receipt of the scheme under sub-section (3), the Tribunal shall within sixty days therefrom, after satisfying that the scheme had been validly approved in accordance with this section, pass an order sanctioning such scheme.

(5) Where a sanctioned scheme provides for the transfer of any property or liability of the sick company to any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick company.

(6) The Tribunal may review any sanctioned scheme and make such modifications, as it may deem fit, or may by order in writing direct company administrator, to prepare a fresh scheme providing for such measures as the company administrator may consider necessary.

(7) The sanction accorded by the Tribunal under sub-section (4) shall be conclusive evidence that all the requirements of the scheme relating to the reconstruction or amalgamation or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Tribunal to be a true copy thereof shall in all legal proceedings be admitted as evidence.

(8) A copy of the sanctioned scheme referred to in sub-section (4) shall be filed with the Registrar by the sick company within a period of thirty days from the date of receipt of a copy thereof.

263. On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick company

Scheme to be binding.

and the transferee company or, as the case may be, the other company and also on the employees, shareholders, creditors and guarantors of the said companies.

Implementation
of scheme.

264. (1) The Tribunal shall, for the purpose of effective implementation of the scheme, have power to enforce, modify or terminate any contract or agreement or any obligation pursuant to such agreement or contract entered into by the company with any other person.

(2) The Tribunal may, if it deems necessary or expedient so to do, by order in writing, authorise the company administrator appointed under section 259 to implement a sanctioned scheme till its successful implementation on such terms and conditions as may be specified in the order and may for that purpose require him to file periodic reports on the implementation of the sanctioned scheme.

(3) Where the whole or substantial assets of the undertaking of the sick company are sold under a sanctioned scheme, the sale proceeds shall be applied towards implementation of the scheme in such manner as the Tribunal may direct:

Provided that debtors and creditors shall have the power to scrutinise and make an appeal for review of the value before final order of fixing value.

(4) Where it is difficult to implement the scheme for any reason or the scheme fails due to non-implementation of obligations under the scheme by the parties concerned, the company administrator authorised to implement the scheme and where there is no such administrator, the company, the secured creditors, or the transferee company in a case of amalgamation, may make an application before the Tribunal for modification of the scheme or to declare the scheme as failed and that the company may be wound up.

(5) The Tribunal shall, within thirty days of presentation of an application under sub-section (4), pass an order for modification of the scheme or, as the case may be, declaring the scheme as failed and pass an order for the winding up of the company if three-fourths in value of the secured creditors consent to the modification of the scheme or winding up of the company.

(6) Where an application under sub-section (4) has been made before the Tribunal and such application is pending before it, such application shall abate, if the secured creditors representing not less than three-fourths in value of the amount outstanding against financial assistance disbursed to the sick company have taken any measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

54 of 2002.

Winding up of
company on
report of
company
administrator.

265. (1) If the scheme is not approved by the creditors in the manner specified in sub-section (2) of section 262, the company administrator shall submit a report to the Tribunal within fifteen days and the Tribunal shall order for the winding up of the sick company.

(2) On the passing of an order under sub-section (1), the Tribunal shall conduct the proceedings for winding up of the sick company in accordance with the provisions of Chapter XX.

Power of
Tribunal to
assess
damages
against
delinquent
directors, etc.

266. (1) If, in the course of the scrutiny or implementation of any scheme or proposal including the draft scheme or proposal, it appears to the Tribunal that any person who has taken part in the promotion, formation or management of the sick company or its undertaking, including any director, manager, officer or employee of the sick company who are or have been in employment of such company,—

(a) has misapplied or retained, or become liable or accountable for, any money or property of the sick company; or

(b) has been guilty of any misfeasance, malfeasance, non-feasance or breach of trust in relation to the sick company,

it may, by order, direct him to repay or restore the money or property, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick company or the other person, entitled thereto by way of compensation in respect of the misapplication, retainer,

misfeasance, malfeasance, non-feasance or breach of trust as the Tribunal thinks just and proper:

Provided that such direction by the Tribunal shall be without prejudice to any other legal action that may be taken against the person including any punishment for fraud in the manner as provided in section 447.

(2) If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than the purposes of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall, by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, for a maximum period of ten years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director, by whatever name called, or to disqualify the said director, promoter, manager from being appointed as a director in any company registered under this Act for a maximum period of six years.

(3) No order shall be made by the Tribunal under this section against any person unless such person has been given a reasonable opportunity of being heard.

267. Whoever violates the provisions of this Chapter or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence before the Tribunal or the Appellate Tribunal or attempts to tamper with the records of reference or appeal filed under this Act, he shall be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to ten lakh rupees.

Punishment
for certain
offences.

268. No appeal shall lie in any court or other authority and no civil court shall have any jurisdiction in respect of any matter in respect of which the Tribunal or the Appellate Tribunal is empowered by or under this Chapter and no injunction shall be granted by any court or other authority in respect of any action taken or proposed to be taken in pursuance of any power conferred by or under this Chapter.

Bar of
jurisdiction.

269. (1) There shall be formed a Fund to be called the Rehabilitation and Insolvency Fund for the purposes of rehabilitation, revival and liquidation of the sick companies.

Rehabilitation
and
Insolvency
Fund.

(2) There shall be credited to the Fund—

- (a) the grants made by the Central Government for the purposes of the Fund;
- (b) the amount deposited by the companies as contribution to the Fund;
- (c) the amount given to the Fund from any other source; and
- (d) the income from investment of the amount in the Fund.

(3) A company which has contributed any amount to the Fund shall, in the event of proceedings initiated in respect of such company under this Chapter or Chapter XX, may make an application to the Tribunal for withdrawal of funds not exceeding the amount contributed by it, for making payments to workmen, protecting the assets of the company or meeting the incidental costs during proceedings.

(4) The Fund shall be managed by an administrator to be appointed by the Central Government in such manner as may be prescribed.

CHAPTER XX

WINDING UP

270. (1) The winding up of a company may be either—

- (a) by the Tribunal; or
- (b) voluntary.

Modes of
winding up.

(2) Notwithstanding anything contained in any other Act, the provisions of this Act with respect to winding up shall apply to the winding up of a company in any of the modes specified under sub-section (1).

PART I.—*Winding up by the Tribunal*

Circumstances
in which
company
may be wound
up by
Tribunal.

271. (1) A company may, on a petition under section 272, be wound up by the Tribunal,—

- (a) if the company is unable to pay its debts;
- (b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- (c) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- (d) if the Tribunal has ordered the winding up of the company under Chapter XIX;
- (e) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
- (f) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- (g) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

(2) A company shall be deemed to be unable to pay its debts,—

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty-one days after the receipt of such demand or to provide adequate security or re-structure or compound the debt to the reasonable satisfaction of the creditor;
- (b) if any execution or other process issued on a decree or order of any court or tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company.

Petition for
winding up.

272. (1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

- (a) the company;
- (b) any creditor or creditors, including any contingent or prospective creditor or creditors;
- (c) any contributory or contributories;

- (d) all or any of the persons specified in clauses (a), (b) and (c) together;
- (e) the Registrar;
- (f) any person authorised by the Central Government in that behalf; or
- (g) in a case falling under clause (c) of sub-section (1) of section 271, by the Central Government or a State Government.

(2) A secured creditor, the holder of any debentures, whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures shall be deemed to be creditors within the meaning of clause (b) of sub-section (1).

(3) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(4) The Registrar shall be entitled to present a petition for winding up under sub-section (1) on any of the grounds specified in sub-section (1) of section 271, except on the grounds specified in clause (b), clause (d) or clause (g) of that sub-section:

Provided that the Registrar shall not present a petition on the ground that the company is unable to pay its debts unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 210 that the company is unable to pay its debts:

Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided also that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

(5) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

(6) Before a petition for winding up of a company presented by a contingent or prospective creditor is admitted, the leave of the Tribunal shall be obtained for the admission of the petition and such leave shall not be granted, unless in the opinion of the Tribunal there is a *prima facie* case for the winding up of the company and until such security for costs has been given as the Tribunal thinks reasonable.

(7) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

273. (1) The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:—

- (a) dismiss it, with or without costs;
- (b) make any interim order as it thinks fit;
- (c) appoint a provisional liquidator of the company till the making of a winding up order;
- (d) make an order for the winding up of the company with or without costs; or
- (e) any other order as it thinks fit:

Powers of
Tribunal.

Provided that an order under this sub-section shall be made within ninety days from the date of presentation of the petition:

Provided further that before appointing a provisional liquidator under clause (c), the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:

Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.

Directions for
filing
statement of
affairs.

274. (1) Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a *prima facie* case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed:

Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances:

Provided further that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.

(2) A company, which fails to file the statement of affairs as referred to in sub-section (1), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be liable for punishment under sub-section (4).

(3) The directors and other officers of the company, in respect of which an order for winding up is passed by the Tribunal under clause (d) of sub-section (1) of section 273, shall, within a period of thirty days of such order, submit, at the cost of the company, the books of account of the company completed and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.

(4) If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

(5) The complaint may be filed in this behalf before the Special Court by Registrar, provisional liquidator, Company Liquidator or any person authorised by the Tribunal.

Company
Liquidators
and their
appointments.

275. (1) For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under sub-section (2) as the Company Liquidator.

(2) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters.

(3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.

(4) The Central Government may remove the name of any person or firm or body

corporate from the panel maintained under sub-section (2) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence:

Provided that the Central Government before removing him or it from the panel shall give him or it a reasonable opportunity of being heard.

(5) The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.

(6) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.

(7) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (c) of sub-section (1) of section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

276. (1) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

Removal and
replacement
of liquidator.

(a) misconduct;

(b) fraud or misfeasance;

(c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;

(d) inability to act as provisional liquidator or as the case may be, Company Liquidator;

(e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

(2) In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

(3) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

(4) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

277. (1) Where the Tribunal makes an order for appointment of provisional liquidator or for the winding up of a company, it shall, within a period not exceeding seven days from the date of passing of the order, cause intimation thereof to be sent to the Company Liquidator or provisional liquidator, as the case may be, and the Registrar.

Intimation to
Company
Liquidator,
provisional
liquidator and
Registrar.

(2) On receipt of the copy of order of appointment of provisional liquidator or winding up order, the Registrar shall make an endorsement to that effect in his records relating to the company and notify in the Official Gazette that such an order has been made and in the case of a listed company, the Registrar shall intimate about such appointment or order, as the case may be, to the stock exchange or exchanges where the securities of the company are listed.

(3) The winding up order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.

(4) Within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided in sub-section (5) and such winding up committee shall comprise of the following persons, namely:—

- (i) Official Liquidator attached to the Tribunal;
- (ii) nominee of secured creditors; and
- (iii) a professional nominated by the Tribunal.

(5) The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:—

- (i) taking over assets;
- (ii) examination of the statement of affairs;
- (iii) recovery of property, cash or any other assets of the company including benefits derived therefrom;
- (iv) review of audit reports and accounts of the company;
- (v) sale of assets;
- (vi) finalisation of list of creditors and contributories;
- (vii) compromise, abandonment and settlement of claims;
- (viii) payment of dividends, if any; and
- (ix) any other function, as the Tribunal may direct from time to time.

(6) The Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.

(7) The Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee.

(8) The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

Effect of
winding up
order.

278. The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories.

Stay of suits,
etc., on
winding up
order.

279. (1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

280. The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—

Jurisdiction
of Tribunal.

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company, including claims by or against any of its branches in India;
- (c) any application made under section 233;
- (d) any scheme submitted under section 262;
- (e) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company,

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.

281. (1) Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely:—

Submission of
report by
Company
Liquidator.

- (a) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company;

Provided that the valuation of the assets shall be obtained from registered valuers for this purpose;

- (b) amount of capital issued, subscribed and paid-up;
- (c) the existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;
- (d) the debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;
- (e) guarantees, if any, extended by the company;
- (f) list of contributories and dues, if any, payable by them and details of any unpaid call;
- (g) details of trade marks and intellectual properties, if any, owned by the company;
- (h) details of subsisting contracts, joint ventures and collaborations, if any;
- (i) details of holding and subsidiary companies, if any;
- (j) details of legal cases filed by or against the company; and
- (k) any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.

(2) The Company Liquidator shall include in his report the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof and any other matters which, in his opinion, it is desirable to bring to the notice of the Tribunal.

(3) The Company Liquidator shall also make a report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximising the value of the assets of the company.

(4) The Company Liquidator may also, if he thinks fit, make any further report or reports.

(5) Any person describing himself in writing to be a creditor or a contributory of the company shall be entitled by himself or by his agent at all reasonable times to inspect the report submitted in accordance with this section and take copies thereof or extracts therefrom on payment of the prescribed fees.

Directions of
Tribunal on
report of
Company
Liquidator.

282. (1) The Tribunal shall, on consideration of the report of the Company Liquidator, fix a time limit within which the entire proceedings shall be completed and the company be dissolved:

Provided that the Tribunal may, if it is of the opinion, at any stage of the proceedings, or on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, that it will not be advantageous or economical to continue the proceedings, revise the time limit within which the entire proceedings shall be completed and the company be dissolved.

(2) The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, order sale of the company as a going concern or its assets or part thereof:

Provided that the Tribunal may, where it considers fit, appoint a sale committee comprising such creditors, promoters and officers of the company as the Tribunal may decide to assist the Company Liquidator in sale under this sub-section.

(3) Where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company, the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210, and on consideration of the report of such investigation it may pass order and give directions under sections 339 to 342 or direct the Company Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.

(4) The Tribunal may order for taking such steps and measures, as may be necessary, to protect, preserve or enhance the value of the assets of the company.

(5) The Tribunal may pass such other order or give such other directions as it considers fit.

Custody of
company's
properties.

283. (1) Where a winding up order has been made or where a provisional liquidator has been appointed, the Company Liquidator or the provisional liquidator, as the case may be, shall, on the order of the Tribunal, forthwith take into his or its custody or control all the property, effects and actionable claims to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.

(2) Notwithstanding anything contained in sub-section (1), all the property and effects of the company shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the company.

(3) On an application by the Company Liquidator or otherwise, the Tribunal may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the

Tribunal directs, to the Company Liquidator, any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.

284. (1) The promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to the Company Liquidator in discharge of his functions and duties.

Promoters, directors, etc., to cooperate with Company Liquidator.

(2) Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

285. (1) As soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall settle a list of contributories, cause rectification of register of members in all cases where rectification is required in pursuance of this Act and shall cause the assets of the company to be applied for the discharge of its liability:

Settlement of list of contributories and application of assets.

Provided that where it appears to the Tribunal that it would not be necessary to make calls on or adjust the rights of contributories, the Tribunal may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the Tribunal shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.

(3) While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—

(a) a person who has been a member shall not be liable to contribute if he has ceased to be a member for the preceding one year or more before the commencement of the winding up;

(b) a person who has been a member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) no person who has been a member shall be liable to contribute unless it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any person, who is or has been a member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;

(e) in the case of a company limited by guarantee, no contribution shall be required from any person, who is or has been a member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up but if the company has a share capital, such member shall be liable to contribute to the extent of any sum unpaid on any shares held by him as if the company were a company limited by shares.

286. In the case of a limited company, any person who is or has been a director or manager, whose liability is unlimited under the provisions of this Act, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of winding up, a member of an unlimited company:

Obligations of directors and managers.

Provided that —

(a) a person who has been a director or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(b) a person who has been a director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Tribunal deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Advisory
committee.

287. (1) The Tribunal may, while passing an order of winding up of a company, direct that there shall be, an advisory committee to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.

(2) The advisory committee appointed by the Tribunal shall consist of not more than twelve members, being creditors and contributories of the company or such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct.

(3) The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the advisory committee.

(4) The advisory committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time.

(5) The provisions relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the advisory committee shall be such as may be prescribed.

(6) The meeting of advisory committee shall be chaired by the Company Liquidator.

Submission of
periodical
reports to
Tribunal.

288. (1) The Company Liquidator shall make periodical reports to the Tribunal and in any case make a report at the end of each quarter with respect to the progress of the winding up of the company in such form and manner as may be prescribed.

(2) The Tribunal may, on an application by the Company Liquidator, review the orders made by it and make such modifications as it thinks fit.

Power of
Tribunal on
application
for stay of
winding up.

289. (1) The Tribunal may, at any time after making a winding up order, on an application of promoter, shareholders or creditors or any other interested person, if satisfied, make an order that it is just and fair that an opportunity to revive and rehabilitate the company be provided staying the proceedings for such time but not exceeding one hundred and eighty days and on such terms and conditions as it thinks fit:

Provided that an order under this sub-section shall be made by the Tribunal only when the application is accompanied with a scheme for rehabilitation.

(2) The Tribunal may, while passing the order under sub-section (1), require the applicant to furnish such security as to costs as it considers fit.

(3) Where an order under sub-section (1) is passed by the Tribunal, the provisions of Chapter XIX shall be followed in respect of the consideration and sanction of the scheme of revival of the company.

(4) Without prejudice to the provisions of sub-section (1), the Tribunal may at any time after making a winding up order, on an application of the Company Liquidator, make an order staying the winding up proceedings or any part thereof, for such time and on such terms and conditions as it thinks fit.

(5) The Tribunal may, before making an order, under this section, require the Company Liquidator to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(6) A copy of every order made under this section shall forthwith be forwarded by the Company Liquidator to the Registrar who shall make an endorsement of the order in his books and records relating to the company.

290. (1) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power—

Powers and
duties of
Company
Liquidator.

(a) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company's seal;

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;

(d) to sell the whole of the undertaking of the company as a going concern;

(e) to raise any money required on the security of the assets of the company;

(f) to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(g) to invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act;

(h) to inspect the records and returns of the company on the files of the Registrar or any other authority;

(i) to prove rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(j) to draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(k) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Company Liquidator himself;

(l) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the company, appoint an agent to do any business which the Company Liquidator is unable to do himself;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,—

(i) for winding up of the company;

(ii) for distribution of assets;

(iii) in discharge of his duties and obligations and functions as Company Liquidator; and

(n) to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

(2) The exercise of powers by the Company Liquidator under sub-section (1) shall be subject to the overall control of the Tribunal.

(3) Notwithstanding the provisions of sub-section (1), the Company Liquidator shall perform such other duties as the Tribunal may specify in this behalf.

Provision for professional assistance to Company Liquidator.

291. (1) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under this Act.

(2) Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

Exercise and control of Company Liquidator's powers.

292. (1) Subject to the provisions of this Act, the Company Liquidator shall, in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by the resolution of the creditors or contributories at any general meeting or by the advisory committee.

(2) Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the advisory committee.

(3) The Company Liquidator—

(a) may summon meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes; and

(b) shall summon such meetings at such times, as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.

(4) Any person aggrieved by any act or decision of the Company Liquidator may apply to the Tribunal, and the Tribunal may confirm, reverse or modify the act or decision complained of and make such further order as it thinks just and proper in the circumstances.

Books to be kept by Company Liquidator.

293. (1) The Company Liquidator shall keep proper books in such manner, as may be prescribed, in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

(2) Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent.

Audit of Company Liquidator's accounts.

294. (1) The Company Liquidator shall maintain proper and regular books of account including accounts of receipts and payments made by him in such form and manner as may be prescribed.

(2) The Company Liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Tribunal an account of the receipts and payments as such liquidator in the prescribed form in duplicate, which shall be verified by a declaration in such form and manner as may be prescribed.

(3) The Tribunal shall cause the accounts to be audited in such manner as it thinks fit, and for the purpose of the audit, the Company Liquidator shall furnish to the Tribunal with such vouchers and information as the Tribunal may require, and the Tribunal may, at any

time, require the production of, and inspect, any books of account kept by the Company Liquidator.

(4) When the accounts of the company have been audited, one copy thereof shall be filed by the Company Liquidator with the Tribunal, and the other copy shall be delivered to the Registrar which shall be open to inspection by any creditor, contributory or person interested.

(5) Where an account referred to in sub-section (4) relates to a Government company, the Company Liquidator shall forward a copy thereof—

(a) to the Central Government, if that Government is a member of the Government company; or

(b) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.

(6) The Company Liquidator shall cause the accounts when audited, or a summary thereof, to be printed, and shall send a printed copy of the accounts or summary thereof by post to every creditor and every contributory:

Provided that the Tribunal may dispense with the compliance of the provisions of this sub-section in any case it deems fit.

295. (1) The Tribunal may, at any time after passing of a winding up order, pass an order requiring any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

Payment of debts by contributory and extent of set-off.

(2) The Tribunal, in making an order, under sub-section (1), may,—

(a) in the case of an unlimited company, allow to the contributory, by way of set-off, any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, allow to any director or manager whose liability is unlimited, or to his estate, such set-off.

(3) In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

296. The Tribunal may, at any time after the passing of a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,—

Power of Tribunal to make calls.

(a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made.

297. The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

Adjustment of rights of contributories.

298. The Tribunal may, in the event of the assets of a company being insufficient to satisfy its liabilities, make an order for the payment out of the assets, of the costs, charges

Power to order costs.

and expenses incurred in the winding up, in such order of priority *inter se* as the Tribunal thinks just and proper.

Power to
summon
persons
suspected of
having
property of
company,
etc.

299. (1) The Tribunal may, at any time after the appointment of a provisional liquidator or the passing of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Tribunal thinks to be capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(2) The Tribunal may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories or on affidavit and may, in the first case, reduce his answers to writing and require him to sign them.

(3) The Tribunal may require any officer or person so summoned to produce any books and papers relating to the company in his custody or power, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien, and the Tribunal shall have power to determine all questions relating to that lien.

(4) The Tribunal may direct the liquidator to file before it a report in respect of debt or property of the company in possession of other persons.

(5) If the Tribunal finds that—

(a) a person is indebted to the company, the Tribunal may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such manner as the Tribunal may consider just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Tribunal thinks fit, with or without costs of the examination;

(b) a person is in possession of any property belonging to the company, the Tribunal may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as the Tribunal may consider just.

(6) If any officer or person so summoned fails to appear before the Tribunal at the time appointed without a reasonable cause, the Tribunal may impose an appropriate cost.

(7) Every order made under sub-section (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908.

5 of 1908.

(8) Any person making any payment or delivery in pursuance of an order made under sub-section (5) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property.

Power to
order
examination
of promoters,
directors, etc.

300. (1) Where an order has been made for the winding up of a company by the Tribunal, and the Company Liquidator has made a report to the Tribunal under this Act, stating that in his opinion a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the company since its formation, the Tribunal may, after considering the report, direct that such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.

(2) The Company Liquidator shall take part in the examination, and for that purpose he or it may, if specially authorised by the Tribunal in that behalf, employ such legal assistance as may be sanctioned by the Tribunal.

(3) The person shall be examined on oath and shall answer all such questions as the Tribunal may put, or allow to be put, to him.

(4) A person ordered to be examined under this section—

(a) shall, before his examination, be furnished at his own cost with a copy of the report of the Company Liquidator; and

(b) may at his own cost employ chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 432, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him.

(5) If any such person applies to the Tribunal to be exculpated from any charges made or suggested against him, it shall be the duty of the Company Liquidator to appear on the hearing of such application and call the attention of the Tribunal to any matters which appear to the Company Liquidator to be relevant.

(6) If the Tribunal, after considering any evidence given or hearing witnesses called by the Company Liquidator, allows the application made under sub-section (5), the Tribunal may order payment to the applicant of such costs as it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, a copy be supplied to him and may thereafter be used in evidence against him, and shall be open to inspection by any creditor or contributory at all reasonable times.

(8) The Tribunal may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal.

(10) The powers of the Tribunal under this section as to the conduct of the examination, but not as to costs, may be exercised by the person or authority before whom the examination is held in pursuance of sub-section (9).

301. At any time either before or after passing a winding up order, if the Tribunal is satisfied that a contributory or a person having property, accounts or papers of the company in his possession is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause—

Arrest of person trying to leave India or abscond.

(a) the contributory to be detained until such time as the Tribunal may order; and

(b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.

302. (1) When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.

Dissolution of company by Tribunal.

(2) The Tribunal shall on an application filed by the Company Liquidator under sub-section (1) or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(3) A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.

(4) If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Appeals from
orders made
before
commencement
of Act.

303. Nothing in this Chapter shall affect the operation or enforcement of any order made by any Court in any proceedings for the winding up of a company immediately before the commencement of this Act and an appeal against such order shall be filed before such authority competent to hear such appeals before such commencement.

PART II.—*Voluntary winding up*

Circumstances
in which
company may
be wound up
voluntarily.

304. A company may be wound up voluntarily,—

(a) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or

(b) if the company passes a special resolution that the company be wound up voluntarily.

Declaration
of solvency in
case of
proposal to
wind up
voluntarily.

305. (1) Where it is proposed to wind up a company voluntarily, its director or directors, or in case the company has more than two directors, the majority of its directors, shall, at a meeting of the Board, make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company and they have formed an opinion that the company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.

(2) A declaration made under sub-section (1) shall have no effect for the purposes of this Act, unless—

(a) it is made within five weeks immediately preceding the date of the passing of the resolution for winding up the company and it is delivered to the Registrar for registration before that date;

(b) it contains a declaration that the company is not being wound up to defraud any person or persons;

(c) it is accompanied by a copy of the report of the auditors of the company prepared in accordance with the provisions of this Act, on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on that date which would also contain a statement of the assets and liabilities of the company on that date; and

(d) where there are any assets of the company, it is accompanied by a report of the valuation of the assets of the company prepared by a registered valuer.

(3) Where the company is wound up in pursuance of a resolution passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full, it shall be presumed, until the contrary is shown, that the director or directors did not have reasonable grounds for his or their opinion under sub-section (1).

(4) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Meeting of
creditors.

306. (1) The company shall along with the calling of meeting of the company at which the resolution for the voluntary winding up is to be proposed, cause a meeting of its creditors either on the same day or on the next day and shall cause a notice of such meeting to be sent

by registered post to the creditors with the notice of the meeting of the company under section 304.

(2) The Board of Directors of the company shall—

(a) cause to be presented a full statement of the position of the affairs of the company together with a list of creditors of the company, if any, copy of declaration under section 305 and the estimated amount of the claims before such meeting; and

(b) appoint one of the directors to preside at the meeting.

(3) Where two-thirds in value of creditors of the company are of the opinion that—

(a) it is in the interest of all parties that the company be wound up voluntarily, the company shall be wound up voluntarily; or

(b) the company may not be able to pay for its debts in full from the proceeds of assets sold in voluntary winding up and pass a resolution that it shall be in the interest of all parties if the company is wound up by the Tribunal in accordance with the provisions of Part I of this Chapter, the company shall within fourteen days thereafter file an application before the Tribunal.

(4) The notice of any resolution passed at a meeting of creditors in pursuance of this section shall be given by the company to the Registrar within ten days of the passing thereof.

(5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and the director of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees, or with both.

307. (1) Where a company has passed a resolution for voluntary winding up and a resolution under sub-section (3) of section 306 is passed, it shall within fourteen days of the passing of the resolution give notice of the resolution by advertisement in the Official Gazette and also in a newspaper which is in circulation in the district where the registered office or the principal office of the company is situate.

Publication
of resolution
to wind up
voluntarily.

(2) If a company contravenes the provisions of sub-section (1), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which such default continues.

308. A voluntary winding up shall be deemed to commence on the date of passing of the resolution for voluntary winding up under section 304.

Commencement
of voluntary
winding up.

309. In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business except as far as required for the beneficial winding up of its business:

Effect of
voluntary
winding up.

Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.

310. (1) The company in its general meeting, where a resolution of voluntary winding up is passed, shall appoint a Company Liquidator from the panel prepared by the Central Government for the purpose of winding up its affairs and distributing the assets of the company and recommend the fee to be paid to the Company Liquidator.

Appointment
of Company
Liquidator.

(2) Where the creditors have passed a resolution for winding up the company under sub-section (3) of section 306, the appointment of the Company Liquidator under this section shall be effective only after it is approved by the majority of creditors in value of the company:

Provided that where such creditors do not approve the appointment of such Company Liquidator, creditors shall appoint another Company Liquidator.

(3) The creditors while approving the appointment of Company Liquidator appointed by the company or appointing the Company Liquidator of their own choice, as the case may be, pass suitable resolution with regard to the fee of the Company Liquidator.

(4) On appointment as Company Liquidator, such liquidator shall file a declaration in the prescribed form within seven days of the date of appointment disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of his or its appointment.

Power to remove and fill vacancy of Company Liquidator.

311. (1) A Company Liquidator appointed under section 310 may be removed by the company where his appointment has been made by the company and, by the creditors, where the appointment is approved or made by such creditors.

(2) Where a Company Liquidator is sought to be removed under this section, he shall be given a notice in writing stating the grounds of removal from his office by the company or the creditors, as the case may be.

(3) Where three-fourth members of the company or three-fourth of creditors in value, as the case may be, after consideration of the reply, if any, filed by the Company Liquidator, in their meeting decide to remove the Company Liquidator, he shall vacate his office.

(4) If a vacancy occurs by death, resignation, removal or otherwise in the office of any Company Liquidator appointed under section 310, the company or the creditors, as the case may be, fill the vacancy in the manner specified in that section.

Notice of appointment of Company Liquidator to be given to Registrar.

312. (1) The company shall give notice to the Registrar of the appointment of a Company Liquidator along with the name and particulars of the Company Liquidator, of every vacancy occurring in the office of Company Liquidator, and of the name of the Company Liquidator appointed to fill every such vacancy within ten days of such appointment or the occurrence of such vacancy.

(2) If a company contravenes the provisions of sub-section (1), the company and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which such default continues.

Cesser of Board's powers on appointment of Company Liquidator.

313. On the appointment of a Company Liquidator, all the powers of the Board of Directors and of the managing or whole-time directors and manager, if any, shall cease, except for the purpose of giving notice of such appointment of the Company Liquidator to the Registrar.

Powers and duties of Company Liquidator in voluntary winding up.

314. (1) The Company Liquidator shall perform such functions and discharge such duties as may be determined from time to time by the company or the creditors, as the case may be.

(2) The Company Liquidator shall settle the list of contributories, which shall be *prima facie* evidence of the liability of the persons named therein to be contributories.

(3) The Company Liquidator shall call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may consider necessary.

(4) The Company Liquidator shall maintain regular and proper books of account in such form and in such manner as may be prescribed and the members and creditors and any officer authorised by the Central Government may inspect such books of account.

(5) The Company Liquidator shall prepare quarterly statement of accounts in such form and manner as may be prescribed and file such statement of accounts duly audited within thirty days from the close of each quarter with the Registrar, failing which the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

(6) The Company Liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(7) The Company Liquidator shall observe due care and diligence in the discharge of his duties.

(8) If the Company Liquidator fails to comply with the provisions of this section except sub-section (5) he shall be punishable with fine which may extend to ten lakh rupees.

315. Where there are no creditors of a company, such company in its general meeting and, where a meeting of creditors is held under section 306, such creditors, as the case may be, may appoint such committees as considered appropriate to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions.

Appointment
of
committees.

316. (1) The Company Liquidator shall report quarterly on the progress of winding up of the company in such form and in such manner as may be prescribed to the members and creditors and shall also call a meeting of the members and the creditors as and when necessary but at least one meeting each of creditors and members in every quarter and apprise them of the progress of the winding up of the company in such form and in such manner as may be prescribed.

Company
Liquidator to
submit report
on progress
of winding
up.

(2) If the Company Liquidator fails to comply with the provisions of sub-section (1), he shall be punishable, in respect of each such failure, with fine which may extend to ten lakh rupees.

317. (1) Where the Company Liquidator is of the opinion that a fraud has been committed by any person in respect of the company, he shall immediately make a report to the Tribunal and the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210 and on consideration of the report of such investigation, the Tribunal may pass such order and give such directions under this Chapter as it may consider necessary including the direction that such person shall attend before the Tribunal on a day appointed by it for that purpose and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof or otherwise.

Report of
Company
Liquidator to
Tribunal for
examination
of persons.

(2) The provisions of section 300 shall *mutatis mutandis* apply in relation to any examination directed under sub-section (1).

318. (1) As soon as the affairs of a company are fully wound up, the Company Liquidator shall prepare a report of the winding up showing that the property and assets of the company have been disposed of and its debt fully discharged or discharged to the satisfaction of the creditors and thereafter call a general meeting of the company for the purpose of laying the final winding up accounts before it and giving any explanation therefor.

Final meeting
and
dissolution of
company.

(2) The meeting referred to in sub-section (1) shall be called by the Company Liquidator in such form and manner as may be prescribed.

(3) If the majority of the members of the company after considering the report of the Company Liquidator are satisfied that the company shall be wound up, they may pass a resolution for its dissolution.

(4) Within two weeks after the meeting, the Company Liquidator shall—

(a) send to the Registrar—

(i) a copy of the final winding up accounts of the company and shall make a return in respect of each meeting and of the date thereof; and

(ii) copies of the resolutions passed in the meetings; and

(b) file an application along with his report under sub-section (1) in such manner as may be prescribed along with the books and papers of the company relating to the winding up, before the Tribunal for passing an order of dissolution of the company.

(5) If the Tribunal is satisfied, after considering the report of the Company Liquidator that the process of winding up has been just and fair, the Tribunal shall pass an order dissolving the company within sixty days of the receipt of the application under sub-section (4).

(6) The Company Liquidator shall file a copy of the order under sub-section (5) with the Registrar within thirty days.

(7) The Registrar, on receiving the copy of the order passed by the Tribunal under sub-section (5), shall forthwith publish a notice in the Official Gazette that the company is dissolved.

(8) If the Company Liquidator fails to comply with the provisions of this section, he shall be punishable with fine which may extend to one lakh rupees.

Power of
Company
Liquidator to
accept shares,
etc., as
consideration
for sale of
property of
company.

319. (1) Where a company (the transferor company) is proposed to be, or is in the course of being, wound up voluntarily and the whole or any part of its business or property is proposed to be transferred or sold to another company (the transferee company), the Company Liquidator of the transferor company may, with the sanction of a special resolution of the company conferring on him either a general authority or an authority in respect of any particular arrangement,—

(a) receive, by way of compensation wholly or in part for the transfer or sale of shares, policies, or other like interest in the transferee company, for distribution among the members of the transferor company; or

(b) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interest or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company:

Provided that no such arrangement shall be entered into without the consent of the secured creditors.

(2) Any transfer, sale or other arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) Any member of the transferor company who did not vote in favour of the special resolution and expresses his dissent therefrom in writing addressed to the Company Liquidator, and left at the registered office of the company within seven days after the passing of the resolution, may require the liquidator either—

(a) to abstain from carrying the resolution into effect; or

(b) to purchase his interest at a price to be determined by agreement or the registered valuer.

(4) If the Company Liquidator elects to purchase the member's interest, the purchase money, raised by him in such manner as may be determined by a special resolution, shall be paid before the company is dissolved.

Distribution
of property
of company.

320. Subject to the provisions of this Act as to overriding preferential payments under section 326, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Arrangement
when binding
on company
and creditors.

321. (1) Any arrangement other than the arrangement referred to in section 319 entered into between the company which is about to be, or is in the course of being wound up and its creditors shall be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by the creditors who hold three-fourths in value of the total amount due to all the creditors of the company.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, apply to the Tribunal and the Tribunal may thereupon amend, vary, confirm or set aside the arrangement.

322. (1) The Company Liquidator or any contributory or creditor may apply to the Tribunal—

(a) to determine any question arising in the course of the winding up of a company; or

(b) to exercise as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if the company were being wound up by the Tribunal.

(2) The Company Liquidator or any creditor or contributory may apply to the Tribunal for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) The Tribunal, if satisfied on an application under sub-section (1) or sub-section (2) that the determination of the question or the required exercise of power or the order applied for will be just and fair, may allow the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks fit.

(4) A copy of an order staying the proceedings in the winding up, made under this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

323. All costs, charges and expenses properly incurred in the winding up, including the fee of the Company Liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

PART III.—Provisions applicable to every mode of winding up

324. In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act or of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

325. (1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—

(a) debts provable;

(b) the valuation of annuities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors,

as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

Provided that the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debts, opts to realise his security,—

(i) the liquidator shall be entitled to represent the workmen and enforce such charge;

(ii) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(iii) so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security, whichever is less, shall rank *pari passu* with the workmen's dues for the purposes of section 326.

Power to apply to Tribunal to have questions determined, etc.

Costs of voluntary winding up.

Debts of all descriptions to be admitted to proof.

Application of insolvency rules in winding up of insolvent companies.

(2) All persons under sub-section (1) shall be entitled to prove and receive dividends out of the assets of the company under winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

Provided that if a secured creditor, instead of relinquishing his security and proving his debts, proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator, including a provisional liquidator, if any, for the preservation of the security before its realisation by the secured creditor.

Explanation.—For the purposes of this sub-section, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.

(3) For the purposes of this section, section 326 and section 327,—

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947;

14 of 1947.

(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947;

14 of 1947.

(ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

8 of 1923.

(iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.

Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.

Overriding preferential payments.

326. (1) Notwithstanding anything contained in this Act or any other law for the time being in force, in the winding up of a company,—

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause

(iii) of the proviso to sub-section (1) of section 325 *pari passu* with such dues;

shall be paid in priority to all other debts:

Provided that in case of the winding up of a company, the sums towards wages or salary referred to in sub-clause (i) of clause (b) of sub-section (3) of section 325, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that sub-section shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

327. (1) In a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts,—

Preferential payments.

(a) all revenues, taxes, cesses and rates due from the company to the Central Government or a State Government or to a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date;

(b) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the company and due for a period not exceeding four months within the twelve months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be notified;

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amount due in respect of contributions payable during the period of twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;

34 of 1948.

(e) unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company;

8 of 1923.

Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;

(f) all sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and

(g) the expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.

(2) Where any payment has been made to any employee of a company on account of wages or salary or accrued holiday remuneration, himself or, in the case of his death, to any other person claiming through him, out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid-up to the amount by which the sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been reduced by reason of the payment having been made.

(3) The debts enumerated in this section shall---

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment to general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given under clause (a) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months immediately before the date of a winding up order, the debts to which priority is given under this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

Explanation.--- For the purposes of this section,---

(a) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment including any order made or direction given thereunder, are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;

(b) the expression "employee" does not include a workman; and

(c) the expression "relevant date" means---

(i) in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date; and

(ii) in any other case, the date of the passing of the resolution for the voluntary winding up of the company.

Fraudulent preference.

328. (1) Where a company has given preference to a person who is one of the creditors of the company or a surety or guarantor for any of the debts or other liabilities of the company, and the company does anything or suffers anything done which has the effect of putting that person into a position which, in the event of the company going into liquidation, will be better than the position he would have been in if that thing had not been done prior to six months of making winding up application, the Tribunal, if satisfied that, such transaction is a fraudulent preference may order as it may think fit for restoring the position to what it would have been if the company had not given that preference.

(2) If the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Transfers not in good faith to be void.

329. Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the

Tribunal or the passing of a resolution for voluntary winding up of the company, shall be void against the Company Liquidator.

330. Any transfer or assignment by a company of all its properties or assets to trustees for the benefit of all its creditors shall be void.

Certain transfers to be void.

331. (1) Where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then, without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.

Liabilities and rights of certain persons fraudulently preferred.

(2) The value of the interest of the person preferred under sub-section (1) shall be determined as at the date of the transaction constituting the fraudulent preference, as if the interest were free of all encumbrances other than those to which the mortgage or charge for the debt of the company was then subject.

(3) On an application made to the Tribunal with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Tribunal shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose, may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

(4) The provisions of sub-section (3) shall apply *mutatis mutandis* in relation to transactions other than payment of money.

332. Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except for the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum or such other rate as may be notified by the Central Government in this behalf.

Effect of floating charge.

333. (1) Where any part of the property of a company which is being wound up consists of---

Disclaimer of onerous property.

(a) land of any tenure, burdened with onerous covenants;

(b) shares or stocks in companies;

(c) any other property which is not saleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or

(d) unprofitable contracts,

the Company Liquidator may, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, with the leave of the Tribunal and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Tribunal, disclaim the property:

Provided that where the Company Liquidator had not become aware of the existence of any such property within one month from the commencement of the winding up, the power

of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Tribunal.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights, interest or liabilities of any other person.

(3) The Tribunal, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Tribunal considers just and proper.

(4) The Company Liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the Company Liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the Tribunal, give notice to the applicant that he intends to apply to the Tribunal for leave to disclaim, and in case the property is under a contract, if the Company Liquidator after such an application as aforesaid does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The Tribunal may, on the application of any person who is, as against the Company Liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Tribunal considers just and proper, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Tribunal may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged under this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Tribunal considers just and proper, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person named therein in that behalf without any conveyance or assignment for the purpose:

Provided that where the property disclaimed is of a leasehold nature, the Tribunal shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person—

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the Tribunal thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Tribunal shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the covenants of the lessee in the lease, free and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person affected by the operation of a disclaimer under this section shall be

deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of such effect, and may accordingly prove the amount as a debt in the winding up.

334. (1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the Company Liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

Transfers, etc., after commencement of winding up to be void.

(2) In the case of a winding up by the Tribunal, any disposition of the property, including actionable claims, of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Tribunal otherwise orders, be void.

335. (1) Where any company is being wound up by the Tribunal,—

(a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or

Certain attachments, executions, etc., in winding up by Tribunal to be void.

(b) any sale held, without leave of the Tribunal of any of the properties or effects of the company, after such commencement,

shall be void.

(2) Nothing in this section shall apply to any proceedings for the recovery of any tax or impost or any dues payable to the Government.

336. (1) If any person, who is or has been an officer of a company which, at the time of the commission of the alleged offence, is being wound up, whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,—

Offences by officers of companies in liquidation.

(a) does not, to the best of his knowledge and belief, fully and truly disclose to the Company Liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;

(b) does not deliver up to the Company Liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control and which he is required by law to deliver up;

(c) does not deliver up to the Company Liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up;

(d) within the twelve months immediately before the commencement of the winding up or at any time thereafter,—

(i) conceals any part of the property of the company to the value of one thousand rupees or more, or conceals any debt due to or from the company;

(ii) fraudulently removes any part of the property of the company to the value of one thousand rupees or more;

(iii) conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company;

(iv) makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company;

(v) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company;

(vi) by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;

(vii) under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(viii) pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing of the property is in the ordinary course of business of the company;

(e) makes any material omission in any statement relating to the affairs of the company;

(f) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the Company Liquidator thereof;

(g) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(h) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses; or

(i) is guilty of any false representation or fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up,

he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees:

Provided that it shall be a good defence if the accused proves that he had no intent to defraud or to conceal the true state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-clause (viii) of clause (d) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees.

Explanation.—For the purposes of this section, the expression “officer” includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

337. If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,—

(a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company;

(b) with intent to defraud creditors of the company or any other person, has

made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date,

he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

338. (1) Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

Liability
where proper
accounts not
kept.

(2) For the purposes of sub-section (1), it shall be deemed that proper books of account have not been kept in the case of any company,—

(a) if such books of account as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid, have not been kept; and

(b) where the business of the company has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified, have not been kept.

339. (1) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct:

Liability for
fraudulent
conduct of
business.

Provided that on the hearing of an application under this sub-section, the Official Liquidator or the Company Liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and, in particular,—

(a) make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf;

(b) make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under section 447.

(4) This section shall apply, notwithstanding that the person concerned may be punishable under any other law for the time being in force in respect of the matters on the ground of which the declaration is to be made.

Explanation.—For the purposes of this section,—

(a) the expression “assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made;

(b) the expression “officer” includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

Power of
Tribunal to
assess
damages
against
delinquent
directors, etc.

340. (1) If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any person, who is or has been a director, manager, Company Liquidator or officer of the company—

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Tribunal may, on the application of the Official Liquidator, or the Company Liquidator, or of any creditor or contributory, made within the period specified in that behalf in sub-section (2), inquire into the conduct of the person, director, manager, Company Liquidator or officer aforesaid, and order him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal considers just and proper, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal considers just and proper.

(2) An application under sub-section (1) shall be made within five years from the date of the winding up order, or of the first appointment of the Company Liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

(3) This section shall apply, notwithstanding that the matter is one for which the person concerned may be criminally liable.

Liability
under sections
339 and 340
to extend to
partners or
directors in
firms or
companies.

341. Where a declaration under section 339 or an order under section 340 is made in respect of a firm or body corporate, the Tribunal shall also have power to make a declaration under section 339, or pass an order under section 340, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

Prosecution
of delinquent
officers and
members of
company.

342. (1) If it appears to the Tribunal in the course of a winding up by the Tribunal, that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company, the Tribunal may, either on the application of any person interested in the winding up or *suo motu*, direct the liquidator to prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the Company Liquidator in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company under this Act, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the Company Liquidator and relating to the matter in question, as the Registrar may require.

(3) Where any report is made under sub-section (2) to the Registrar,--

(a) if he thinks fit, he may apply to the Central Government for an order to make further inquiry into the affairs of the company by any person designated by him and for conferring on such person all the powers of investigation as are provided under this Act;

(b) if he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government, and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute prosecution;

Provided that no report shall be made by the Registrar under this clause without first giving the accused person a reasonable opportunity of making a statement in writing to the Registrar and of being heard thereon.

(4) If it appears to the Tribunal in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the Company Liquidator to the Registrar under sub-section (2), the Tribunal may, on the application of any person interested in the winding up or *suo motu*, direct the Company Liquidator to make such a report, and on a report being made, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(5) When any prosecution is instituted under this section, it shall be the duty of the liquidator and of every person, who is or has been an officer and agent of the company to give all assistance in connection with the prosecution which he is reasonably able to give.

Explanation.—For the purposes of this sub-section, the expression “agent”, in relation to a company, shall include any banker or legal adviser of the company and any person employed by the company as auditor.

(6) If a person fails or neglects to give assistance required by sub-section (5), he shall be liable to pay fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

343. (1) The Company Liquidator may---

(a) with the sanction of the Tribunal, when the company is being wound up by the Tribunal; and

(b) with the sanction of a special resolution of the company and prior approval of the Tribunal, in the case of a voluntary winding up,--

(i) pay any class of creditors in full;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or

(iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor

Company Liquidator to exercise certain powers subject to sanction.

or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) Notwithstanding anything contained in sub-section (1); in the case of a winding up by the Tribunal, the Central Government may make rules to provide that the Company Liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be prescribed, exercise any of the powers referred to in sub-clause (ii) or sub-clause (iii) of clause (b) of sub-section (1) without the sanction of the Tribunal.

(3) Any creditor or contributory may apply in the manner prescribed to the Tribunal with respect to any exercise or proposed exercise of powers by the Company Liquidator under this section, and the Tribunal shall after giving a reasonable opportunity to such applicant and the Company Liquidator, pass such orders as it may think fit.

Statement
that company
is in
liquidation.

344. (1) Where a company is being wound up, whether by the Tribunal or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a Company Liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If a company contravenes the provisions of sub-section (1), the company, and every officer of the company, the Company Liquidator and any receiver or manager, who wilfully authorises or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

Books and
papers of
company to
be evidence.

345. Where a company is being wound up, all books and papers of the company and of the Company Liquidator shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be recorded therein.

Inspection of
books and
papers by
creditors and
contributories.

346. (1) At any time after the making of an order for the winding up of a company by the Tribunal, any creditor or contributory of the company may inspect the books and papers of the company only in accordance with, and subject to such rules as may be prescribed.

(2) Nothing contained in sub-section (1) shall exclude or restrict any rights conferred by any law for the time being in force—

(a) on the Central Government or a State Government;

(b) on any authority or officer thereof; or

(c) on any person acting under the authority of any such Government or of any such authority or officer.

Disposal of
books and
papers of
company.

347. (1) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the Company Liquidator may be disposed of as follows:—

(a) in the case of winding up by the Tribunal, in such manner as the Tribunal directs; and

(b) in the case of voluntary winding up, in such manner as the company by special resolution with the prior approval of the creditors direct.

(2) After the expiry of five years from the dissolution of the company, no responsibility shall devolve on the company, the Company Liquidator, or any person to whom the custody of the books and papers has been entrusted, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Central Government may, by rules,—

(a) prevent for such period as it thinks proper the destruction of the books and

papers of a company which has been wound up and of its Company Liquidator; and

(b) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to appeal to the Tribunal from any order which may be made by the Central Government in the matter.

(4) If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

348. (1) If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,—

Information
as to pending
liquidations.

(a) in the case of a winding up by the Tribunal, with the Tribunal; and

(b) in the case of a voluntary winding up, with the Registrar.

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply.

(2) When the statement is filed with the Tribunal under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company:

(3) Where a statement referred to in sub-section (1) relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof—

(a) to the Central Government, if that Government is a member of the Government company;

(b) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.

(4) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement referred to in sub-section (1), and to receive a copy thereof or an extract therefrom.

(5) Any person fraudulently stating himself to be a creditor or contributory under sub-section (4) shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall, on the application of the Company Liquidator, be punishable accordingly.

(6) If a Company Liquidator contravenes the provisions of this section, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

(7) If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (1) audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.

Official Liquidator to make payments into public account of India.

349. Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the monies received by him as Official Liquidator of any company, into the public account of India in the Reserve Bank of India.

Company Liquidator to deposit monies into scheduled bank.

350. (1) Every Company Liquidator of a company shall, in such manner and at such times as may be prescribed, deposit the monies received by him in his capacity as such in a scheduled bank to the credit of a special bank account opened by him in that behalf:

Provided that if the Tribunal considers that it is advantageous for the creditors or contributories or the company, it may permit the account to be opened in such other bank specified by it.

(2) If any Company Liquidator at any time retains for more than ten days a sum exceeding five thousand rupees or such other amount as the Tribunal may, on the application of the Company Liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the Tribunal, he shall—

(a) pay interest on the amount so retained in excess, at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Tribunal;

(b) be liable to pay any expenses occasioned by reason of his default; and

(c) also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, disallowed, or may also be removed from his office.

Liquidator not to deposit monies into private banking account.

351. Neither the Official Liquidator nor the Company Liquidator of a company shall deposit any monies received by him in his capacity as such into any private banking account.

Company Liquidation Dividend and Undistributed Assets Account.

352. (1) Where any company is being wound up and the liquidator has in his hands or under his control any money representing—

(a) dividends payable to any creditor but which had remained unpaid for six months after the date on which they were declared; or

(b) assets refundable to any contributory which have remained undistributed for six months after the date on which they become refundable,

the liquidator shall forthwith deposit the said money into a separate special account to be known as the Company Liquidation Dividend and Undistributed Assets Account maintained in a scheduled bank.

(2) The liquidator shall, on the dissolution of the company, pay into the Company Liquidation Dividend and Undistributed Assets Account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.

(3) The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to the Registrar, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(4) The liquidator shall be entitled to a receipt from the scheduled bank for any money paid to it under sub-sections (1) and (2), and such receipt shall be an effectual discharge of the Company Liquidator in respect thereof.

(5) Where a company is being wound up voluntarily, the Company Liquidator shall, when filing a statement in pursuance of sub-section (1) of section 348, indicate the sum of

money which is payable under sub-sections (1) and (2) of this section during the six months preceding the date on which the said statement is prepared, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Company Liquidation Dividend and Undistributed Assets Account.

(6) Any person claiming to be entitled to any money paid into the Company Liquidation Dividend and Undistributed Assets Account, whether paid in pursuance of this section or under the provisions of any previous company law may apply to the Registrar for payment thereof, and the Registrar, if satisfied that the person claiming is entitled, may make the payment to that person of the sum due:

Provided that the Registrar shall settle the claim of such person within a period of sixty days from the date of receipt of such claim, failing which the Registrar shall make a report to the Regional Director giving reasons of such failure.

(7) Any money paid into the Company Liquidation Dividend and Undistributed Assets Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government, but a claim to any money so transferred may be preferred under sub-section (6) and shall be dealt with as if such transfer had not been made and the order, if any, for payment on the claim will be treated as an order for refund of revenue.

(8) Any liquidator retaining any money which should have been paid by him into the Company Liquidation Dividend and Undistributed Assets Account under this section shall—

(a) pay interest on the amount so retained at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Registrar:

Provided that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause;

(b) be liable to pay any expenses occasioned by reason of his default; and

(c) where the winding up is by the Tribunal, also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, to be disallowed, and to be removed from his office by the Tribunal.

353. (1) If any Company Liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Tribunal may, on an application made to it by any contributory or creditor of the company or by the Registrar, make an order directing the Company Liquidator to make good the default within such time as may be specified in the order.

Liquidator to make returns, etc.

(2) Any order under sub-section (1) may provide that all costs of, and incidental to, the application shall be borne by the Company Liquidator.

(3) Nothing in this section shall prejudice the operation of any enactment imposing penalties on a Company Liquidator in respect of any such default as aforesaid.

354. (1) In all matters relating to the winding up of a company, the Tribunal may—

(a) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence;

(b) if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Tribunal may direct; and

(c) appoint a person to act as chairman of any such meeting and to report the result thereof to the Tribunal.

Meetings to ascertain wishes of creditors or contributories.

(2) While ascertaining the wishes of creditors under sub-section (1), regard shall be had to the value of each debt of the creditor.

(3) While ascertaining the wishes of contributories under sub-section (1), regard shall be had to the number of votes which may be cast by each contributory.

Court,
tribunal or
person, etc.,
before whom
affidavit may
be sworn.

355. (1) Any affidavit required to be sworn under the provisions, or for the purposes, of this Chapter may be sworn—

(a) in India before any court, tribunal, judge or person lawfully authorised to take and receive affidavits; and

(b) in any other country before any court, judge or person lawfully authorised to take and receive affidavits in that country or before an Indian diplomatic or consular officer.

(2) All tribunals, judges, Justices, commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such court, tribunal, judge, person, diplomatic or consular officer, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Chapter.

Powers of
Tribunal to
declare
dissolution of
company
void.

356. (1) Where a company has been dissolved, whether in pursuance of this Chapter or of section 232 or otherwise, the Tribunal may at any time within two years of the date of the dissolution, on application by the Company Liquidator of the company or by any other person who appears to the Tribunal to be interested, make an order, upon such terms as the Tribunal thinks fit, declaring the dissolution to be void, and thereupon such proceedings may be taken as if the company had not been dissolved.

(2) It shall be the duty of the Company Liquidator or the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if the Company Liquidator or the person fails so to do, the Company Liquidator or the person shall be punishable with fine which may extend to ten thousand rupees for every day during which the default continues.

Commencement
of winding up
by Tribunal.

357. (1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.

Exclusion of
certain time in
computing
period of
limitation.

358. Notwithstanding anything in the Limitation Act, 1963, or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, the period from the date of commencement of the winding up of the company to a period of one year immediately following the date of the winding up order shall be excluded.

36 of 1963.

PART IV.—Official Liquidators

Appointment
of Official
Liquidator.

359. (1) For the purposes of this Act, so far as it relates to the winding up of companies by the Tribunal, the Central Government may appoint as many Official Liquidators, Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge the functions of the Official Liquidator.

(2) The liquidators appointed under sub-section (1) shall be whole-time officers of the Central Government.

(3) The salary and other allowances of the Official Liquidator, Joint Official Liquidator,

Deputy Official Liquidator and Assistant Official Liquidator shall be paid by the Central Government.

360. (1) The Official Liquidator shall exercise such powers and perform such duties as the Central Government may prescribe.

Powers and functions of Official Liquidator.

(2) Without prejudice to the provisions of sub-section (1), the Official Liquidator may—

(a) exercise all or any of the powers as may be exercised by a Company Liquidator under the provisions of this Act; and

(b) conduct inquiries or investigations, if directed by the Tribunal or the Central Government, in respect of matters arising out of winding up proceedings.

361. (1) Where the company to be wound up under this Chapter, —

Summary procedure for liquidation.

(i) has assets of book value not exceeding one crore rupees; and

(ii) belongs to such class or classes of companies as may be prescribed,

the Central Government may order it to be wound up by summary procedure provided under this Part.

(2) Where an order under sub-section (1) is made, the Central Government shall appoint the Official Liquidator as the liquidator of the company.

(3) The Official Liquidator shall forthwith take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled.

(4) The Official Liquidator shall, within thirty days of his appointment, submit a report to the Central Government in such manner and form, as may be prescribed, including a report whether in his opinion, any fraud has been committed in promotion, formation or management of the affairs of the company or not.

(5) On receipt of the report under sub-section (4), if the Central Government is satisfied that any fraud has been committed by the promoters, directors or any other officer of the company, it may direct further investigation into the affairs of the company and that a report shall be submitted within such time as may be specified.

(6) After considering the investigation report under sub-section (5), the Central Government may order that winding up may be proceeded under Part I of this Chapter or under the provision of this Part.

362. (1) The Official Liquidator shall expeditiously dispose of all the assets whether movable or immovable within sixty days of his appointment.

Sale of assets and recovery of debts due to company.

(2) The Official Liquidator shall serve a notice within thirty days of his appointment calling upon the debtors of the company or the contributories, as the case may be, to deposit within thirty days with him the amount payable to the company.

(3) Where any debtor does not deposit the amount under sub-section (2), the Central Government may, on an application made to it by the Official Liquidator, pass such orders as it thinks fit.

(4) The amount recovered under this section by the Official Liquidator shall be deposited in accordance with the provisions of section 349.

363. (1) The Official Liquidator within thirty days of his appointment shall call upon the creditors of the company to prove their claims in such manner as may be prescribed, within thirty days of the receipt of such call.

Settlement of claims of creditors by Official Liquidator.

(2) The Official Liquidator shall prepare a list of claims of creditors in such manner as may be prescribed and each creditor shall be communicated of the claims accepted or rejected along with reasons to be recorded in writing.

364. (1) Any creditor aggrieved by the decision of the Official Liquidator under section 363 may file an appeal before the Central Government within thirty days of such decision.

Appeal by creditor.

(2) The Central Government may after calling the report from the Official Liquidator either dismiss the appeal or modify the decision of the Official Liquidator.

(3) The Official Liquidator shall make payment to the creditors whose claims have been accepted.

(4) The Central Government may, at any stage during settlement of claims, if considers necessary, refer the matter to the Tribunal for necessary orders.

Order of
dissolution of
company.

365. (1) The Official Liquidator shall, if he is satisfied that the company is finally wound up, submit a final report to—

(i) the Central Government, in case no reference was made to the Tribunal under sub-section (4) of section 364; and

(ii) in any other case, the Central Government and the Tribunal.

(2) The Central Government, or as the case may be, the Tribunal on receipt of such report shall order that the company be dissolved.

(3) Where an order is made under sub-section (2), the Registrar shall strike off the name of the company from the register of companies and publish a notification to this effect.

CHAPTER XXI

PART I.—Companies Authorised to Register under this Act

Companies
capable of
being
registered.

366. (1) For the purposes of this Part, the word "company" includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

(2) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of seven or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up:

Provided that—

(i) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;

6 of 1882.
7 of 1913.
1 of 1956.

(ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(iii) a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;

(iv) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;

(v) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;

(vi) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(3) In computing any majority required for the purposes of sub-section (1), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

367. On compliance with the requirements of this Chapter with respect to registration, and on payment of such fees, if any, as are payable under section 403, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

Certificate of registration of existing companies.

368. All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Vesting of property on registration.

369. The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Saving of existing liabilities.

370. All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place:

Continuation of pending legal proceedings.

Provided that execution shall not issue against the property or persons of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

371. (1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

Effect of registration under this Part.

(2) All provisions contained in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(a) Table F in Schedule I shall not apply unless and except in so far as it is adopted by special resolution;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any company whose shares are not numbered;

(c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) The provisions of this Act with respect to—

(a) the registration of an unlimited company as a limited company;

(b) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called-up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called-up except in the event of winding up,

shall apply, notwithstanding anything in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) None of the provisions of this Act (apart from those of section 242) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.

(7) In this section, the expression “instrument” includes deed of settlement, deed of partnership, or limited liability partnership.

Power of
Court to stay
or restrain
proceedings.

372. The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

Suits stayed
on winding up
order.

373. Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the Tribunal and except on such terms as the Tribunal may impose.

Obligations
of companies
registering
under this
Part.

374. Every company which is seeking registration under this Part shall,—

(a) ensure that secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to company's registration under this Part;

(b) publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed giving notice about registration under this Part, seeking objections and address them suitably;

(c) file an affidavit, duly notarised, from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.

(d) comply with such other conditions as may be prescribed.

PART II.—*Winding up of unregistered companies*

375. (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, in such manner as may be prescribed, and all the provisions of this Act, with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections (2) to (4).

Winding up
of
unregistered
companies.

(2) No unregistered company shall be wound up under this Act voluntarily.

(3) An unregistered company may be wound up under the following circumstances, namely:—

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the company is unable to pay its debts;

(c) if the Tribunal is of opinion that it is just and equitable that the company should be wound up.

(4) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Tribunal may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character as a member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Tribunal may approve or direct, the company has not, within ten days after service of the notice,—

(i) paid, secured or compounded for the debt or demand;

(ii) procured the suit or other legal proceeding to be stayed; or

(iii) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

(d) if it is otherwise proved to the satisfaction of the Tribunal that the company is unable to pay its debts.

Explanation.—For the purposes of this Part, the expression "unregistered company"—

(a) shall not include—

(i) a railway company incorporated under any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;

(ii) a company registered under this Act; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden, Pakistan immediately before the separation of that country from India; and

(b) save as aforesaid, shall include any partnership firm, limited liability partnership or society or co-operative society, association or company consisting of more than seven members at the time when the petition for winding up the partnership firm, limited liability partnership or society or co-operative society, association or company, as the case may be, is presented before the Tribunal.

Power to
wind up
foreign
companies,
although
dissolved.

376. Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

Provisions of
Chapter
cumulative.

377. (1) The provisions of this Part, with respect to unregistered companies shall be in addition to and not in derogation of, any provisions hereinbefore in this Act contained with respect to the winding up of companies by the Tribunal.

(2) The Tribunal or Official Liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Tribunal or Official Liquidator in winding up of companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

Saving and
construction
of enactments
conferring
power to wind
up partnership
firm,
association or
company, etc.,
in certain
cases.

378. Nothing in this Part, shall affect the operation of any enactment which provides for any partnership firm, limited liability partnership or society or co-operative society, association or company being wound up, or being wound up as a company or as an unregistered company, under the Companies Act, 1956, or any Act repealed by that Act:

1 of 1956.

Provided that references in any such enactment to any provision contained in the Companies Act, 1956 or in any Act repealed by that Act shall be read as references to the corresponding provision, if any, contained in this Act.

1 of 1956.

CHAPTER XXII

COMPANIES INCORPORATED OUTSIDE INDIA

Application
of Act to
foreign
companies.

379. Where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

380. (1) Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration—

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

(d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) any other information as may be prescribed.

(2) Every foreign company existing at the commencement of this Act shall, if it has not delivered to the Registrar before such commencement, the documents and particulars specified in sub-section (1) of section 592 of the Companies Act, 1956, continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.

(3) Where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.

381. (1) Every foreign company shall, in every calendar year,—

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents as may be prescribed; and

(b) deliver a copy of those documents to the Registrar:

Provided that the Central Government may, by notification, direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in that notification.

(2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof in the English language.

(3) Every foreign company shall send to the Registrar along with the documents required to be delivered to him under sub-section (1), a copy of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in sub-section (1) is made out.

382. Every foreign company shall—

(a) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;

Documents, etc., to be delivered to Registrar by foreign companies.

Accounts of foreign company.

Display of name, etc., of foreign company.

(b) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company; and

(c) if the liability of the members of the company is limited, cause notice of that fact—

(i) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

(ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

Service on
foreign
company.

383. Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

Debentures,
annual return,
registration of
charges,
books of
account and
their
inspection.

384. (1) The provisions of section 71 shall apply *mutatis mutandis* to a foreign company.

(2) The provisions of section 92 shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.

(3) The provisions of section 128 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India, the books of account referred to in that section, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

(4) The provisions of Chapter VI shall apply *mutatis mutandis* to charges on properties which are created or acquired by any foreign company.

(5) The provisions of Chapter XIV shall apply *mutatis mutandis* to the Indian business of a foreign company as they apply to a company incorporated in India.

Fee for
registration of
documents.

385. There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee, as may be prescribed.

Interpretation.

386. For the purposes of the foregoing provisions of this Chapter,—

(a) the expression “certified” means certified in the prescribed manner to be a true copy or a correct translation;

(b) the expression “director”, in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and

(c) the expression “place of business” includes a share transfer or registration office.

Dating of
prospectus
and
particulars to
be contained
therein.

387. (1) No person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and—

(a) contains particulars with respect to the following matters, namely:—

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments or provisions by or under which the incorporation of the company was effected;

(iii) address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected;

(iv) the date on which and the country in which the company would be or was incorporated; and

(v) whether the company has established a place of business in India and, if so, the address of its principal office in India; and

(b) states the matters specified under section 26;

Provided that sub-clauses (i), (ii) and (iii) of clause (a) of this sub-section shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

(2) Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed by virtue of sub-section (1), or purporting to impute him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.

(3) No person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in sub-section (1), unless the form is issued with a prospectus which complies with the provisions of this Chapter and such issue does not contravene the provisions of section 388:

Provided that this sub-section shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to securities.

(4) This section —

(a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce in favour of other persons; and

(b) except in so far as it requires a prospectus to be dated, to the issue of a prospectus relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange,

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under this Act apart from this section.

388. (1) No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India,

Provisions as to expert's consent and allotment.

whether the company has or has not been established, or when formed will or will not establish, a place of business in India, —

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of sections 33 and 40, so far as applicable.

(2) For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Registration
of prospectus.

389. No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

Offer of
Indian
Depository
Receipts.

390. Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

(a) the offer of Indian Depository Receipts;

(b) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;

(c) the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and

(d) the manner of sale, transfer or transmission of Indian Depository Receipts, by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

Application
of sections 34
to 36 and
Chapter XX.

391. (1) The provisions of sections 34 to 36 (both inclusive) shall apply to—

(i) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;

(ii) the issue of Indian Depository Receipts by a foreign company.

(2) The provisions of Chapter XX shall apply *mutatis mutandis* for closure of the place of business of a foreign company in India as if it were a company incorporated in India.

Punishment
for
contravention.

392. Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty

thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

393. Any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

CHAPTER XXIII

GOVERNMENT COMPANIES

394. (1) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—

Annual reports on Government companies.

(a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (6) of section 143; and

(b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

(2) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred to in sub-section (1).

395. (1) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—

Annual reports where one or more State Governments are members of companies.

(a) prepared within the time specified in sub-section (1) of section 394; and

(b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section.

(2) The provisions of this section and section 394 shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

CHAPTER XXIV

REGISTRATION OFFICES AND FEES

396. (1) For the purposes of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under the rules made thereunder and for the purposes of registration of companies under this Act, the Central Government shall, by notification, establish such number of offices at such places as it thinks fit, specifying their jurisdiction.

Registration offices.

(2) The Central Government may appoint such Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies and discharge of various functions under this Act, and the powers and duties that may be exercisable by such officers shall be such as may be prescribed.

(3) The terms and conditions of service, including the salaries payable to persons appointed under sub-section (2), shall be such as may be prescribed.

(4) The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

Admissibility
of certain
documents as
evidence.

397. Notwithstanding anything contained in any other law for the time being in force, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

Provisions
relating to
filing of
applications,
documents,
inspection,
etc., in
electronic
form.

398. (1) Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may make rules so as to require from such date as may be prescribed in the rules that—

21 of 2000.

(a) such applications, balance sheet, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or the rules made thereunder, shall be filed in the electronic form and authenticated in such manner as may be prescribed;

(b) such document, notice, any communication or intimation, as may be required to be served or delivered under this Act, in the electronic form and authenticated in such manner as may be prescribed;

(c) such applications, balance sheet, prospectus, return, register, memorandum, articles, particulars of charges, or any other particulars or document and return filed under this Act or rules made thereunder shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be prescribed;

(d) such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for inspection under this Act or the rules made thereunder, may be made by any person through the electronic form in such manner as may be prescribed;

(e) such fees, charges or other sums payable under this Act or the rules made thereunder shall be paid through the electronic form and in such manner as may be prescribed; and

(f) the Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue certificate of incorporation, register such document, issue such certificate, record the notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or the rules made thereunder or perform duties or discharge functions or exercise powers under this Act or the rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar in the electronic form in such manner as may be prescribed.

Explanation.— For the removal of doubts, it is hereby clarified that the rules made under this section shall not relate to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or punishment therefor.

(2) The Central Government may, by notification, frame a scheme to carry out the provisions of sub-section (1) through the electronic form.

399. (1) Save as otherwise provided elsewhere in this Act, any person may—

(a) inspect by electronic means any documents kept by the Registrar in accordance with the rules made, being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of such fees as may be prescribed;

Inspection,
production
and evidence
of documents
kept by
Registrar.

(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment in advance of such fees as may be prescribed:

Provided that the rights conferred by this sub-section shall be exercisable—

(i) in relation to documents delivered to the Registrar with a prospectus in pursuance of section 26, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and

(ii) in relation to documents so delivered in pursuance of clause (b) of sub-section (1) of section 388, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any court or the Tribunal except with the leave of that court or the Tribunal and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court or the Tribunal.

(3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy by the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

400. The Central Government may also provide in the rules made under section 398 and section 399 that the electronic form for the purposes specified in these sections shall be exclusive, or in the alternative or in addition to the physical form, therefor.

Electronic
form to be
exclusive,
alternative or
in addition to
physical form.

401. The Central Government may provide such value added services through the electronic form and levy such fee thereon as may be prescribed.

Provision of
value added
services
through
electronic
form.

402. All the provisions of the Information Technology Act, 2000 relating to the electronic records, including the manner and format in which the electronic records shall be filed, in so

Application of
provisions of
Information
Technology
Act, 2000.

far as they are not inconsistent with this Act, shall apply in relation to the records in electronic form specified under section 398.

Fee for filing,
etc.

403. (1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed:

Provided further that any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the first time specified in first proviso on payment of fee and additional fee specified under this section.

(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

Fees, etc., to
be credited
into public
account.

404. All fees, charges and other sums received by any Registrar, Additional, Joint, Deputy or Assistant Registrar or any other officer of the Central Government in pursuance of any provision of this Act shall be paid into the public account of India in the Reserve Bank of India.

CHAPTER XXV

COMPANIES TO FURNISH INFORMATION OR STATISTICS

Power of
Central
Government
to direct
companies to
furnish
information
or statistics.

405. (1) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

(2) Every order under sub-section (1) shall be published in the Official Gazette and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit and the date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be.

(3) For the purpose of satisfying itself that any information or statistics furnished by a company or companies in pursuance of any order under sub-section (1) is correct and complete, the Central Government may by order require such company or companies to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary.

(4) If any company fails to comply with an order made under sub-section (1) or sub-section (3), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.

(5) Where a foreign company carries on business in India, all references to a company in this section shall be deemed to include references to the foreign company in relation, and only in relation, to such business.

CHAPTER XXVI

Nidhis

406. (1) In this section, "*Nidhi*" means a company which has been incorporated as a *Nidhi* with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

Power to
modify Act in
its
application to
Nidhis.

(2) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any *Nidhi* or *Nidhis* of any class or description as may be specified in that notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

CHAPTER XXVII

NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

407. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) "Chairperson" means the Chairperson of the Appellate Tribunal;

(b) "Judicial Member" means a member of the Tribunal or the Appellate Tribunal appointed as such and includes the President or the Chairperson, as the case may be;

(c) "Member" means a member, whether Judicial or Technical of the Tribunal or the Appellate Tribunal and includes the President or the Chairperson, as the case may be;

(d) "President" means the President of the Tribunal;

(e) "Technical Member" means a member of the Tribunal or the Appellate Tribunal appointed as such.

408. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

Constitution
of National
Company
Law Tribunal.

409. (1) The President shall be a person who is or has been a Judge of a High Court for five years.

Qualification
of President
and Members
of Tribunal.

(2) A person shall not be qualified for appointment as a Judicial Member unless he—

(a) is, or has been, a judge of a High Court; or

(b) is, or has been, a District Judge for at least five years; or

(c) has, for at least ten years been an advocate of a court.

Explanation.—For the purposes of clause (c), in computing the period during which a person has been an advocate of a court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he become an advocate.

(3) A person shall not be qualified for appointment as a Technical Member unless he—

(a) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least three years shall be in the pay

scale of Joint Secretary to the Government of India or equivalent or above in that service; or

(b) is, or has been, in practice as a chartered accountant for at least fifteen years; or

(c) is, or has been, in practice as a cost accountant for at least fifteen years; or

(d) is, or has been, in practice as a company secretary for at least fifteen years; or

(e) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies; or

(f) is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947.

14 of 1947.

Constitution
of Appellate
Tribunal.

410. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal.

Qualifications
of chair-
person and
Members of
Appellate
Tribunal.

411. (1) The chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(2) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for five years.

(3) A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than twenty-five years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

Selection of
Members of
Tribunal and
Appellate
Tribunal.

412. (1) The President of the Tribunal and the chairperson and Judicial Members of the Appellate Tribunal, shall be appointed after consultation with the Chief Justice of India.

(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—

(a) Chief Justice of India or his nominee—Chairperson;

(b) a senior Judge of the Supreme Court or a Chief Justice of High Court—Member;

(c) Secretary in the Ministry of Corporate Affairs—Member;

(d) Secretary in the Ministry of Law and Justice—Member; and

(e) Secretary in the Department of Financial Services in the Ministry of Finance—Member.

(3) The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.

(4) The Selection Committee shall determine its procedure for recommending persons under sub-section (2).

(5) No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

Term of office
of President,
chairperson
and other
Members.

413. (1) The President and every other Member of the Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.

(2) A Member of the Tribunal shall hold office as such until he attains,—

(a) in the case of the President, the age of sixty-seven years;

(b) in the case of any other Member, the age of sixty-five years:

Provided that a person who has not completed fifty years of age shall not be eligible for appointment as Member:

Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

(3) The chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.

(4) A Member of the Appellate Tribunal shall hold office as such until he attains,—

(a) in the case of the Chairperson, the age of seventy years;

(b) in the case of any other Member, the age of sixty-seven years:

Provided that a person who has not completed fifty years of age shall not be eligible for appointment as Member:

Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

414. The salary, allowances and other terms and conditions of service of the Members of the Tribunal and the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to their disadvantage after their appointment.

Salary,
allowances
and other
terms and
conditions of
service of
Members.

415. (1) In the event of the occurrence of any vacancy in the office of the President or the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the President or the Chairperson, as the case may be, until the date on which a new President or Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

Acting
President and
Chairperson
of Tribunal or
Appellate
Tribunal.

(2) When the President or the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the President or the Chairperson, as the case may be, until the date on which the President or the Chairperson resumes his duties.

416. The President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office:

Resignation
of Members.

Provided that the President, the Chairperson, or the Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

417. (1) The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who—

Removal of
Members.

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.

(2) Without prejudice to the provisions of sub-section (1), the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government in which such President, the Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

(3) The Central Government may, with the concurrence of the Chief Justice of India, suspend from office, the President, the Chairperson or Member in respect of whom reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government shall, after consultation with the Supreme Court, make rules to regulate the procedure for the inquiry on the ground of proved misbehaviour or incapacity referred to in sub-section (2).

Staff of
Tribunal and
Appellate
Tribunal.

418. (1) The Central Government shall, in consultation with the Tribunal and the Appellate Tribunal, provide the Tribunal and the Appellate Tribunal, as the case may be, with such officers and other employees as may be necessary for the exercise of the powers and discharge of the functions of the Tribunal and the Appellate Tribunal.

(2) The officers and other employees of the Tribunal and the Appellate Tribunal shall discharge their functions under the general superintendence and control of the President, or as the case may be, the Chairperson, or any other Member to whom powers for exercising such superintendence and control are delegated by him.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Tribunal and the Appellate Tribunal shall be such as may be prescribed.

Benches of
Tribunal.

419. (1) There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.

(2) The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.

(3) The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:

Provided that it shall be competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of a single Judicial Member and exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.

(4) The President shall, for the disposal of any case relating to rehabilitation, restructuring, reviving or winding up, of companies, constitute one or more Special Benches consisting of three or more Members, majority necessarily being of Judicial Members.

(5) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

420. (1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

Orders of
Tribunal.

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

421. (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

Appeal from
orders of
Tribunal.

(2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

422. (1) Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

Expeditious
disposal by
Tribunal and
Appellate
Tribunal.

(2) Where any application or petition or appeal is not disposed of within the period specified in sub-section (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding ninety days as he may consider necessary.

423. Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

Appeal to
Supreme
Court.

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Procedure
before
Tribunal and
Appellate
Tribunal.

424. (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

5 of 1908.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

1 of 1872.

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(h) any other matter which may be prescribed.

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

Power to
punish for
contempt.

425. The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that—

70 of 1971.

(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and

(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

426. The Tribunal or the Appellate Tribunal may, by general or special order, direct, subject to such conditions, if any, as may be specified in the order, any of its officers or employees or any other person authorised by it to inquire into any matter connected with any proceeding or, as the case may be, appeal before it and to report to it in such manner as may be specified in the order.

Delegation of powers.

45 of 1860.

427. The President, Members, officers and other employees of the Tribunal and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

President, Members, officers, etc., to be public servants.

428. No suit, prosecution or other legal proceeding shall lie against the Tribunal, the President, Member, officer or other employee, or against the Appellate Tribunal, the Chairperson, Member, officer or other employees thereof or liquidator or any other person authorised by the Tribunal or the Appellate Tribunal for the discharge of any function under this Act in respect of any loss or damage caused or likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.

Protection of action taken in good faith.

429. (1) The Tribunal may, in any proceeding relating to a sick company or winding up of any other company, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such sick or other company, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—

Power to seek assistance of Chief Metropolitan Magistrate, etc.

(a) take possession of such property, books of account or other documents; and

(b) cause the same to be entrusted to the Tribunal or other person authorised by it.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

430. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

Civil court not to have jurisdiction.

431. No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.

432. A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

Right to legal representation.

Limitation.

433. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.

36 of 1963.

Transfer of
certain
pending
proceedings.

434. (1) On such date as may be notified by the Central Government in this behalf,—

(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;

1 of 1956.

(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days;

(c) all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.

1 of 1956.

(d) any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated:

1 of 1986.

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act:

Provided further that no fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this clause.

(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.

CHAPTER XXVIII

SPECIAL COURTS.

Establishment
of Special
Courts.

435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

2 of 1974.

436. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Offences
triable by
Special
Courts.

(a) all offences under this Act shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;

2 of 1974.

(b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

2 of 1974.

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and

(d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

2 of 1974.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

2 of 1974.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years:

Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed:

Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

2 of 1974.

437. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Appeal and
revision.

2 of 1974.

438. Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

Application
of Code to
proceedings
before
Special Court.

Offences to
be non-
cognizable.

439. (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

2 of 1974.

(2) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf:

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:

Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, where the complainant under sub-section (2) is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

2 of 1974.

(4) The provisions of sub-section (2) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

Explanation.—The liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (2).

Transitional
provisions.

440. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

2 of 1974.

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.

Compounding
of certain
offences.

441. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by—

2 of 1974.

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government,

on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation.—For the purposes of this section,—

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) “Regional Director” means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

(3) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(4) The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.

(5) Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(a) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;

(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(7) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.

Mediation and
Conciliation
Panel.

442. (1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

(3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

(4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(6) Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

Power of
Central
Government
to appoint
company
prosecutors.

443. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may appoint generally, or for any case, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors appointed under section 24 of the Code.

2 of 1974.

Appeal
against
acquittal.

444. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may, in any case arising under this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court, and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

2 of 1974.

Compensation
for accusation
without
reasonable
cause.

445. The provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply *mutatis mutandis* to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

2 of 1974.

Application
of fines.

446. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

CHAPTER XXIX

MISCELLANEOUS

Punishment
for fraud.

447. Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation.—For the purposes of this section—

(i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

448. Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

Punishment
for false
statement.

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

449. Save as otherwise provided in this Act, if any person intentionally gives false evidence—

Punishment
for false
evidence.

(a) upon any examination on oath or solemn affirmation, authorised under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

450. If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

Punishment
where no
specific
penalty or
punishment is
provided.

451. If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

Punishment
in case of
repeated
default.

452. (1) If any officer or employee of a company—

Punishment
for wrongful
withholding
of property.

(a) wrongfully obtains possession of any property, including cash of the company; or

(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it; any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

Punishment
for improper
use of
"Limited" or
"Private
Limited".

453. If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.

Adjudication
of penalties.

454. (1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as may be prescribed.

(2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).

(3) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act.

(4) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default.

(5) Any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer an appeal to the Regional Director having jurisdiction in the matter.

(6) Every appeal under sub-section (5) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed.

(7) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

(8) (i) Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

(ii) Where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Dormant
company.

455. (1) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation.—For the purposes of this section,—

(i) “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

(ii) “significant accounting transaction” means any transaction other than—

(a) payment of fees by a company to the Registrar;

(b) payments made by it to fulfil the requirements of this Act or any other law;

(c) allotment of shares to fulfil the requirements of this Act; and

(d) payments for maintenance of its office and records.

(2) The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

(3) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

(4) In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

(5) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

(6) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

456. No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer, of any report, paper or proceedings.

Protection of
action taken
in good faith.

457. Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of the Government or any other person shall not be compelled to disclose to any court, Tribunal or other authority, the source from where he got any information which—

Non-
disclosure of
information
in certain
cases.

(a) has led the Central Government to order an investigation under section 210;

or

(b) is or has been material or relevant in connection with such investigation.

458. (1) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification:

Delegation by
Central
Government
of its powers
and
functions.

Provided that the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to Securities and Exchange Board for listed companies or the companies which intend to get their securities listed and in such case, any officer authorised by the Securities and Exchange Board shall have the power to file a complaint in the court of competent jurisdiction.

(2) A copy of every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.

Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.

459. (1) Where the Central Government or the Tribunal is required or authorised by any provision of this Act—

(a) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or

(b) to give any direction in relation to any matter; or

(c) to grant any exemption in relation to any matter,

then, the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or any other provision of this Act, accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of a contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(2) Save as otherwise provided in this Act, every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of this Act—

(a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter; or

(b) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or

(c) in respect of any other matter,

shall be accompanied by such fees as may be prescribed:

Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by different classes of companies.

Condonation of delay in certain cases.

460. Notwithstanding anything contained in this Act,—

(a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and

(b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

Annual report by Central Government.

461. The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of the close of the year to which the report relates.

Power to exempt class or classes of companies from provisions of this Act.

462. (1) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—

(a) shall not apply to such class or classes of companies; or

(b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

463. (1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit:

Power of court to grant relief in certain cases.

Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).

(3) No court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

464. (1) No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force:

Prohibition of association or partnership of persons exceeding certain number.

Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred.

(2) Nothing in sub-section (1) shall apply to—

(a) a Hindu undivided family carrying on any business; or

(b) an association or partnership, if it is formed by professionals who are governed by special Acts.

(3) Every member of an association or partnership carrying on business in contravention of sub-section (1) shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

465. (1) The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed:

Repeal of certain enactments and savings.

Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable *mutatis mutandis* to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies:

Provided further that until a date is notified by the Central Government under sub-section (1) of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed:

Provided also that provisions of the Companies Act, 1956 referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

of 1956.
Sikkim Act
of 1961.
of 1956.

of 1956.

of 1956.
of 2009.

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;

(d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;

(e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;

(f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;

(g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;

(h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

(j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and

1 of 1956.

(k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

1 of 1956.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 were also a Central Act.

10 of 1897.
Sikkim Act 8
of 1961.

1 of 1956. 466. (1) Notwithstanding anything contained in section 465, the Board of Company Law Administration constituted under the Companies Act, 1956 (hereafter in this section referred to as the Company Law Board) shall stand dissolved on the constitution of the Tribunal and the Appellate Tribunal:

Dissolution of Company Law Board and consequential provisions.

Provided that until the Tribunal and the Appellate Tribunal is constituted, the Chairman, Vice-Chairman and Members of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal, who fulfil the qualifications and requirements provided under this Act regarding appointment as President or Chairperson or Member of the Tribunal or the Appellate Tribunal, shall function as President, Chairperson or Member of the Tribunal or the Appellate Tribunal:

Provided further that every officer or other employee, who had been appointed on deputation basis to the Company Law Board, shall, on such dissolution,—

(i) become officer or employee of the Tribunal or the Appellate Tribunal, if he fulfils the qualifications and requirements under this Act; and

(ii) stand reverted to his parent cadre, Ministry or Department, in any other case:

Provided also that every officer and the other employee of the Company Law Board, employed on regular basis by that Board, shall become, on and from such dissolution the officer and other employee, respectively, of the Tribunal or the Appellate Tribunal with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if he had continued to serve that Board and shall continue to do so unless and until his employment in the Tribunal or the Appellate Tribunal is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Tribunal or the Appellate Tribunal, as the case may be:

14 of 1947. Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, any officer or other employee who becomes an officer or other employee of the Tribunal or the Appellate Tribunal under the preceding proviso shall not be entitled to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other employees who have become officers or employees of the Tribunal or the Appellate Tribunal shall, out of the monies standing to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Tribunal or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the Tribunal or the Appellate Tribunal in such manner as may be prescribed.

(2) The persons holding the offices of Chairman, Vice-Chairman and Members, and officers and other employees of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal who are not covered under proviso to sub-section (1) shall vacate their respective offices on such constitution and no such Chairman, Vice-Chairman and Members and officers or other employees shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service, if any.

467. (1) Subject to the provisions of this section, the Central Government may, by notification, alter any of the regulations, rules, Tables, forms and other provisions contained in any of the Schedules to this Act.

Power of Central Government to amend Schedules.

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs:

Provided that no such alteration in Table F of Schedule I shall apply to any company registered before the date of such alteration.

(3) Every alteration made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

Powers of
Central
Government
to make rules
relating to
winding up.

468. (1) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.

5 of 1908.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) as to the mode of proceedings to be held for winding up of a company by the Tribunal;

(ii) for the voluntary winding up of companies, whether by members or by creditors;

(iii) for the holding of meetings of creditors and members in connection with proceedings under section 230;

(iv) for giving effect to the provisions of this Act as to the reduction of the capital;

(v) generally for all applications to be made to the Tribunal under the provisions of this Act;

(vi) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(vii) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;

(viii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(ix) the making of calls; and

(x) the fixing of a time within which debts and claims shall be proved.

(3) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of this Act and in force at such commencement, shall continue to be in force, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.

Power of
Central
Government
to make
rules.

469. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.

(3) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

(4) Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

470. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made after the expiry of a period of five years from the date of commencement of section 1 of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

SCHEDULE I

(See sections 4 and 5)

TABLE-A

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

- 1st The name of the company is ".....Limited / Private Limited".
- 2nd The registered office of the company will be situated in the State of.....
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is limited and this liability is limited to the amount unpaid, if any, on the shares held by them.
- 5th The share capital of the company is.....rupees, divided into.....shares of.....rupees each.
- 6th We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of.....Merchant		Signed before me: Signature.....
C.D. of.....Merchant		Signed before me: Signature.....
E.F. of.....Merchant		Signed before me: Signature.....
G.H. of.....Merchant		Signed before me: Signature.....
I.J. of.....Merchant		Signed before me: Signature.....
K.L. of.....Merchant		Signed before me: Signature.....
M.N. of.....Merchant		Signed before me: Signature.....
Total shares taken:		

- 7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B.Merchant		Signed before me: Signature.....

8th Shri/Smt....., son/daughter of, resident of..... aged..... years
shall be the nominee in the event of death of the sole member (Applicable in case of
one person company)

Dated..... the day of

TABLE -B

**MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY
GUARANTEE AND NOT HAVING A SHARE CAPITAL**

- 1st The name of the company is ".....Limited/Private Limited".
- 2nd The registered office of the company will be situated in the State of.....
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a)
are:—
- 4th The liability of the member(s) is limited.
- 5th Every member of the company undertakes to contribute:
(i) to the assets of the company in the event of its being wound up while he is a
member, or within one year after he ceases to be a member, for payment of the debts
and liabilities of the company or of such debts and liabilities as may have been
contracted before he ceases to be a member; and
(ii) to the costs, charges and expenses of winding up (and for the adjustment of the
rights of the contributories among themselves),
such amount as may be required, not exceeding.....rupees.
- 6th We, the several persons, whose names and addresses are subscribed, are desirous of
being formed into a company in pursuance of this memorandum of association.

Names, addresses, descriptions and occupations of subscribers	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of.....Merchant		Signed before me: Signature.....
C.D. of.....Merchant		Signed before me: Signature.....
E.F. of.....Merchant		Signed before me: Signature.....
G.H. of.....Merchant		Signed before me: Signature.....
I.J. of.....Merchant		Signed before me: Signature.....
K.L. of.....Merchant		Signed before me: Signature.....
M.N. of.....Merchant		Signed before me: Signature.....

7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B.Merchant		Signed before me: Signature.....

8th Shri/Smt....., son/daughter of, resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of

TABLE-C

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL

1st The name of the company is “.....Limited/Private Limited”.

2nd The registered office of the company will be situated in the State of.....

3rd (a) The objects to be pursued by the company on its incorporation are:—

(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—

4th The liability of the member(s) is limited.

5th Every member of the company undertakes to contribute:

(i) to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member; and

(ii) to the costs, charges and expenses of winding up (and for the adjustment of the rights of the contributories among themselves),

such amount as may be required, not exceeding.....rupees.

6th The share capital of the company is.....rupees, divided into.....shares of.....rupees each

7th We, the several persons, whose names, addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of.....Merchant			Signed before me: Signature.....
C.D. of.....Merchant			Signed before me: Signature.....
E.F. of.....Merchant			Signed before me: Signature.....
G.H. of.....Merchant			Signed before me: Signature.....
I.J. of.....Merchant			Signed before me: Signature.....
K.L. of.....Merchant			Signed before me: Signature.....
M.N. of.....Merchant			Signed before me: Signature.....

8th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. of.....Merchant		Signed before me: Signature.....

9th Shri/Smt....., son/daughter of, resident of.....: aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of.....

TABLE-D

MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL

- 1st The name of the company is ".....Company".
- 2nd The registered office of the company will be situated in the State of.....
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is unlimited.
- 5th We, the several persons, whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, descriptions and occupations of subscribers	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of.....Merchant		Signed before me: Signature.....
C.D. of.....Merchant		Signed before me: Signature.....
E.F. of.....Merchant		Signed before me: Signature.....
G.H. of.....Merchant		Signed before me: Signature.....
I.J. of.....Merchant		Signed before me: Signature.....
K.L. of.....Merchant		Signed before me: Signature.....
M.N. of.....Merchant		Signed before me: Signature.....

6th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B.Merchant		Signed before me: Signature.....

7th Shri/Smt....., son/daughter of, resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of.....

TABLE-E

MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING SHARE CAPITAL

- 1st The name of the company is ".....Company".
- 2nd The registered office of the company will be situated in the State of.....
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is unlimited.
- 5th The share capital of the company is.....rupees, divided into.....shares of.....rupees each.
- 6th We, the several persons, whose names, and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we

respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of.....Merchant		Signed before me: Signature.....
C.D. of.....Merchant		Signed before me: Signature.....
E.F. of.....Merchant		Signed before me: Signature.....
G.H. of.....Merchant		Signed before me: Signature.....
I.J. of.....Merchant		Signed before me: Signature.....
K.L. of.....Merchant		Signed before me: Signature.....
M.N. of.....Merchant		Signed before me: Signature.....

7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B.Merchant		Signed before me: Signature.....

8th Shri/Smt....., son/daughter of, resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of

TABLE-F

ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

Interpretation

I. (1) In these regulations—

(a) “the Act” means the Companies Act, 2013,

(b) “the seal” means the common seal of the company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Share capital and variation of rights

II. 1. Subject to the provisions of the Act and these Articles, the shares in the capital of the company shall be under the control of the Directors who may issue, allot or otherwise dispose of the same or any of them to such persons, in such proportion and on such terms and conditions and either at a premium or at par and at such time as they may from time to time think fit.

2. (i) Every person whose name is entered as a member in the register of members shall be entitled to receive within two months after incorporation, in case of subscribers to the memorandum or after allotment or within one month after the application for the registration of transfer or transmission or within such other period as the conditions of issue shall be provided,—

(a) one certificate for all his shares without payment of any charges; or

(b) several certificates, each for one or more of his shares, upon payment of twenty rupees for each certificate after the first.

(ii) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid-up thereon.

(iii) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

3. (i) If any share certificate be worn out, defaced, mutilated or torn or if there be no further space on the back for endorsement of transfer, then upon production and surrender thereof to the company, a new certificate may be issued in lieu thereof, and if any certificate is lost or destroyed then upon proof thereof to the satisfaction of the company and on execution of such indemnity as the company deem adequate, a new certificate in lieu thereof shall be given. Every certificate under this Article shall be issued on payment of twenty rupees for each certificate.

(ii) The provisions of Articles (2) and (3) shall *mutatis mutandis* apply to debentures of the company.

4. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

5. (i) The company may exercise the powers of paying commissions conferred by sub-section (6) of section 40, provided that the rate per cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section and rules made thereunder.

(ii) The rate or amount of the commission shall not exceed the rate or amount prescribed in rules made under sub-section (6) of section 40.

(iii) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.

6. (i) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of section 48, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.

(ii) To every such separate meeting, the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be at least two persons holding at least one-third of the issued shares of the class in question.

7. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

8. Subject to the provisions of section 55, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

Lien

9. (i) The company shall have a first and paramount lien—

(a) on every share (not being a fully paid share), for all monies (whether presently payable or not) called, or payable at a fixed time, in respect of that share; and

(b) on all shares (not being fully paid shares) standing registered in the name of a single person, for all monies presently payable by him or his estate to the company:

Provided that the Board of directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

(ii) The company's lien, if any, on a share shall extend to all dividends payable and bonuses declared from time to time in respect of such shares.

10. The company may sell, in such manner as the Board thinks fit, any shares on which the company has a lien:

Provided that no sale shall be made—

(a) unless a sum in respect of which the lien exists is presently payable; or

(b) until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency.

11. (i) To give effect to any such sale, the Board may authorise some person to transfer the shares sold to the purchaser thereof.

(ii) The purchaser shall be registered as the holder of the shares comprised in any such transfer.

(iii) The purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

12. (i) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable.

(ii) The residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

Calls on shares

13. (i) The Board may, from time to time, make calls upon the members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times:

Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

(ii) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified, the amount called on his shares.

(iii) A call may be revoked or postponed at the discretion of the Board.

14. A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by instalments.

15. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

16. (i) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at ten per cent. per annum or at such lower rate, if any, as the Board may determine.

(ii) The Board shall be at liberty to waive payment of any such interest wholly or in part.

17. (i) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable.

(ii) In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

18. The Board—

(a) may, if it thinks fit, receive from any member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him; and

(b) upon all or any of the monies so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, twelve per cent. per annum, as may be agreed upon between the Board and the member paying the sum in advance.

Transfer of shares

19. (i) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.

(ii) The transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

20. The Board may, subject to the right of appeal conferred by section 58 decline to register—

(a) the transfer of a share, not being a fully paid share, to a person of whom they do not approve; or

(b) any transfer of shares on which the company has a lien.

21. The Board may decline to recognise any instrument of transfer unless—

(a) the instrument of transfer is in the form as prescribed in rules made under sub-section (1) of section 56;

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; and

(c) the instrument of transfer is in respect of only one class of shares.

22. On giving not less than seven days' previous notice in accordance with section 91 and rules made thereunder, the registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine:

Provided that such registration shall not be suspended for more than thirty days at any one time or for more than forty-five days in the aggregate in any year.

Transmission of shares

23. (i) On the death of a member, the survivor or survivors where the member was a joint holder, and his nominee or nominees or legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

(ii) Nothing in clause (i) shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

24. (i) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either—

(a) to be registered himself as holder of the share; or

(b) to make such transfer of the share as the deceased or insolvent member could have made.

(ii) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased or insolvent member had transferred the share before his death or insolvency.

25. (i) If the person so becoming entitled shall elect to be registered as holder of the share himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects:

(ii) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.

(iii) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.

26. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the share, until the requirements of the notice have been complied with.

27. In case of a One Person Company—

(i) on the death of the sole member, the person nominated by such member shall be the person recognised by the company as having title to all the shares of the member;

(ii) the nominee on becoming entitled to such shares in case of the member's death shall be informed of such event by the Board of the company;

(iii) such nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable;

(iv) on becoming member, such nominee shall nominate any other person with the prior written consent of such person who, shall in the event of the death of the member, become the member of the company.

Forfeiture of shares

28. If a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

29. The notice aforesaid shall—

(a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and

(b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made shall be liable to be forfeited.

30. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

31. (i) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.

(ii) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.

32. (i) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.

(ii) The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.

33. (i) A duly verified declaration in writing that the declarant is a director, the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share;

(ii) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of;

(iii) The transferee shall thereupon be registered as the holder of the share; and

(iv) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

34. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Alteration of capital

35. The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in the resolution.

36. Subject to the provisions of section 61, the company may, by ordinary resolution,—

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(b) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;

(c) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum;

(d) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

37. Where shares are converted into stock,—

(a) the holders of stock may transfer the same or any part thereof in the same manner as, and subject to the same regulations under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit;

Provided that the Board may, from time to time, fix the minimum amount of stock transferable, so, however, that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

(b) the holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

(c) such of the regulations of the company as are applicable to paid-up shares shall apply to stock and the words "share" and "shareholder" in those regulations shall include "stock" and "stock-holder" respectively.

38. The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law,—

(a) its share capital;

(b) any capital redemption reserve account; or

(c) any share premium account.

Capitalisation of profits

39. (i) The company in general meeting may, upon the recommendation of the Board, resolve—

(a) that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution; and

(b) that such sum be accordingly set free for distribution in the manner specified in clause (ii) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.

(ii) The sum aforesaid shall not be paid in cash but shall be applied, subject to the provision contained in clause (iii), either in or towards—

(A) paying up any amounts for the time being unpaid on any shares held by such members respectively;

(B) paying up in full, unissued shares of the company to be allotted and distributed, credited as fully paid-up, to and amongst such members in the proportions aforesaid;

(C) partly in the way specified in sub-clause (A) and partly in that specified in sub-clause (B);

(D) A securities premium account and a capital redemption reserve account may, for the purposes of this regulation, be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares;

(E) The Board shall give effect to the resolution passed by the company in pursuance of this regulation.

40. (i) Whenever such a resolution as aforesaid shall have been passed, the Board shall—

(a) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares if any; and

(b) generally do all acts and things required to give effect thereto.

(ii) The Board shall have power—

(a) to make such provisions, by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit, for the case of shares becoming distributable in fractions; and

(b) to authorise any person to enter, on behalf of all the members entitled thereto, into an agreement with the company providing for the allotment to them respectively, credited as fully paid-up, of any further shares to which they may be entitled upon such capitalisation, or as the case may require, for the payment by the company on their behalf, by the application thereto of their respective proportions of profits resolved to be capitalised, of the amount or any part of the amounts remaining unpaid on their existing shares;

(iii) Any agreement made under such authority shall be effective and binding on such members.

Buy-back of shares

41. Notwithstanding anything contained in these articles but subject to the provisions of sections 68 to 70 and any other applicable provision of the Act or any other law for the time being in force, the company may purchase its own shares or other specified securities.

General meetings

42. All general meetings other than annual general meeting shall be called extraordinary general meeting.

43. (i) The Board may, whenever it thinks fit, call an extraordinary general meeting.

(ii) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at general meetings

44. (i) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(ii) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.

45. The chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.

46. If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.

47. If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.

48. In case of a One Person Company—

(i) the resolution required to be passed at the general meetings of the company shall be deemed to have been passed if the resolution is agreed upon by the sole member and communicated to the company and entered in the minutes book maintained under section 118;

(ii) such minutes book shall be signed and dated by the member;

(iii) the resolution shall become effective from the date of signing such minutes by the sole member.

Adjournment of meeting

49. (i) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(ii) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(iii) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(iv) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Voting rights

50. Subject to any rights or restrictions for the time being attached to any class or classes of shares,—

(a) on a show of hands, every member present in person shall have one vote; and

(b) on a poll, the voting rights of members shall be in proportion to his share in the paid-up equity share capital of the company.

51. A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.

52. (i) In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

(ii) For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

53. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

54. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

55. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

56. (i) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(ii) Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.

Proxy

57. The instrument appointing a proxy and the power-of-attorney or other authority, if any, under which it is signed or a notarised copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; and in default the instrument of proxy shall not be treated as valid.

58. An instrument appointing a proxy shall be in the form as prescribed in the rules made under section 105.

59. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Board of Directors

60. The number of the directors and the names of the first directors shall be determined by writing by the subscribers of the memorandum or a majority of them.

61. (i) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.

(ii) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—

(a) in attending and returning from meetings of the Board of Directors or any committee thereof or general meetings of the company; or

(b) in connection with the business of the company.

62. The Board may pay all expenses incurred in getting up and registering the company.

63. The company may exercise the powers conferred on it by section 88 with regard to the keeping of a foreign register; and the Board may (subject to the provisions of that section) make and vary such regulations as it may think fit respecting the keeping of any such register.

64. All cheques, promissory notes, drafts, *hundis*, bills of exchange and other negotiable instruments, and all receipts for monies paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by such person and in such manner as the Board shall from time to time by resolution determine.

65. Every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.

66. (i) Subject to the provisions of section 149, the Board shall have power at any time, and from time to time, to appoint a person as an additional director, provided the number of the directors and additional directors together shall not at any time exceed the maximum strength fixed for the Board by the articles.

(ii) Such person shall hold office only up to the date of the next annual general meeting of the company but shall be eligible for appointment by the company as a director at that meeting subject to the provisions of the Act.

Proceedings of the Board

67. (i) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(ii) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

68. (i) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(ii) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote.

69. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

70. (i) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.

(ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be Chairperson of the meeting.

71. (i) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

(ii) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

72. (i) A committee may elect a Chairperson of its meetings.

(ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.

73. (i) A committee may meet and adjourn as it thinks fit.

(ii) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the Chairperson shall have a second or casting vote.

74. All acts done in any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

75. Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.

76. In case of a One Person Company—

(i) where the company is having only one director, all the businesses to be transacted at the meeting of the Board shall be entered into minutes book maintained under section 118;

(ii) such minutes book shall be signed and dated by the director;

(iii) the resolution shall become effective from the date of signing such minutes by the director.

Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer

77. Subject to the provisions of the Act,—

(i) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board;

(ii) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

78. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.

The Seal

79. (i) The Board shall provide for the safe custody of the seal.

(ii) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Dividends and Reserve

80. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.

81. Subject to the provisions of section 123, the Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.

82. (i) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks fit as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, think fit.

(ii) The Board may also carry forward any profits which it may consider necessary not to divide, without setting them aside as a reserve.

83. (i) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.

(ii) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.

(iii) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

84. The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

85. (i) Any dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.

(ii) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.

86. Any one of two or more joint holders of a share may give effective receipts for any dividends, bonuses or other monies payable in respect of such share.

87. Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act.

88. No dividend shall bear interest against the company.

Accounts

89. (i) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.

(ii) No member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the Board or by the company in general meeting.

Winding up

90. Subject to the provisions of Chapter XX of the Act and rules made thereunder—

(i) If the company shall be wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members, in specie or kind, the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not.

(ii) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

(iii) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories if he considers necessary, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

91. Every officer of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in which relief is granted to him by the court or the Tribunal.

Note: The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address,

description and occupation, if any, and such signatures shall be in form specified below:

Names, addresses, descriptions and occupations of subscribers	Witnesses (along with names, addresses, descriptions and occupations)
A.B. of.....Merchant	Signed before me Signature.....
C.D. of.....Merchant	Signed before me Signature.....
E.F. of.....Merchant	Signed before me Signature.....
G.H. of.....Merchant	Signed before me Signature.....
I.J. of.....Merchant	Signed before me Signature.....
K.L. of.....Merchant	Signed before me Signature.....
M.N. of.....Merchant	Signed before me Signature.....

Dated the.....day of20.....

Place:

TABLE-G

ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, register an increase of members.
2. All the articles of Table F in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

TABLE-H

ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL

Interpretation

I. (1) In these regulations—

(a) “the Act” means the Companies Act, 2013;

(b) “the seal” means the common seal of the company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall have the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Members

- II. 1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.

2. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.

General meetings

3. All general meetings other than annual general meeting shall be called extraordinary general meeting.

4. (i) The Board may, whenever it thinks fit, call an extraordinary general meeting.

(ii) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at general meetings

5. (i) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(ii) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.

6. The Chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.

7. If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as Chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.

8. If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.

Adjournment of meeting

9. (i) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(ii) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(iii) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(iv) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Voting rights

10. Every member shall have one vote.

11. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

12. No member shall be entitled to vote at any general meeting unless all sums presently payable by him to the company have been paid.

13. (i) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(ii) Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.

14. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

15. A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.

16. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

Board of Directors

17. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

18. (i) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.

(ii) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—

(a) in attending and returning from meetings of the Board of Directors or any committee thereof or general meetings of the company; or

(b) in connection with the business of the company.

Proceedings of the Board

19. (i) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(ii) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

20. (i) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(ii) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote.

21. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

22. (i) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.

(ii) If no such chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their members to be Chairperson of the meeting.

23. (i) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

(ii) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

24. (i) A committee may elect a Chairperson of its meetings.

(ii) If no such Chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.

25. (i) A committee may meet and adjourn as it thinks proper.

(ii) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

26. All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

27. Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.

***Chief Executive Officer, Manager, Company Secretary or
Chief Financial Officer***

28. Subject to the provisions of the Act,—

(i) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board.

(ii) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

29. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.

The Seal

30. (i) The Board shall provide for the safe custody of the seal.

(ii) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Note: The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address,

description and occupation, if any, and such signatures shall be in form specified below:

Names, addresses, descriptions and occupations of subscribers	Witnesses (along with names, addresses, descriptions and occupations)
A.B. of.....Merchant	Signed before me Signature.....
C.D. of.....Merchant	Signed before me Signature.....
E.F. of.....Merchant	Signed before me Signature.....
G.H. of.....Merchant	Signed before me Signature.....
I.J. of.....Merchant	Signed before me Signature.....
K.L. of.....Merchant	Signed before me Signature.....
M.N. of.....Merchant	Signed before me Signature.....

Dated the.....day of20.....

Place:

TABLE-I

ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING A SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, register an increase of members.
2. All the articles of Table F in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

TABLE-J

ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.
2. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.
3. All the articles of Table H in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

SCHEDULE II

(See section 123)

USEFUL LIVES TO COMPUTE DEPRECIATION

PART 'A'

1. Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. The depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its residual value. The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the number of production or similar units expected to be obtained from the asset by the entity.

2. For the purpose of this Schedule, the term depreciation includes amortisation.

3. Without prejudice to the foregoing provisions of paragraph 1,—

(i) In case of such class of companies, as may be prescribed and whose financial statements comply with the accounting standards prescribed for such class of companies under section 133 the useful life of an asset shall not normally be different from the useful life and the residual value shall not be different from that as indicated in Part C, provided that if such a company uses a useful life or residual value which is different from the useful life or residual value indicated therein, it shall disclose the justification for the same.

(ii) In respect of other companies the useful life of an asset shall not be longer than the useful life and the residual value shall not be higher than that prescribed in Part C.

(iii) For intangible assets, the provisions of the Accounting Standards mentioned under sub-para (i) or (ii), as applicable, shall apply.

PART 'B'

4. The useful life or residual value of any specific asset, as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule.

PART 'C'

5. Subject to Parts A and B above, the following are the useful lives of various tangible assets:

Nature of assets	Useful Life
I. Buildings [NESD]	
(a) Buildings (other than factory buildings) RCC Frame Structure	60 Years
(b) Buildings (other than factory buildings) other than RCC Frame Structure	30 Years
(c) Factory buildings	-do-
(d) Fences, wells, tube wells	5 Years
(e) Others (including temporary structure, etc.)	3 Years
II. Bridges, culverts, bunders, etc. [NESD]	30 Years
III. Roads [NESD]	
(a) Carpeted roads	
(i) Carpeted Roads-RCC	10 Years
(ii) Carpeted Roads-other than RCC	5 Years

(b) Non-carpeted roads 3 Years

IV. Plant and Machinery

(i) General rate applicable to plant and machinery not covered under special plant and machinery

- (a) Plant and Machinery other than continuous process plant not covered under specific industries 15 Years
- (b) continuous process plant for which no special rate has been prescribed under (ii) below [NESD] 8 Years

(ii) Special Plant and Machinery

(a) Plant and Machinery related to production and exhibition of Motion Picture Films

1. Cinematograph films—Machinery used in the production and exhibition of cinematograph films, recording and reproducing equipments, developing machines, printing machines, editing machines, synchronizers and studio lights except bulbs 13 Years
2. Projecting equipment for exhibition of films -do-

(b) Plant and Machinery used in glass manufacturing

1. Plant and Machinery except direct fire glass melting furnaces — Recuperative and regenerative glass melting furnaces 13 Years
2. Plant and Machinery except direct fire glass melting furnaces — Moulds [NESD] 8 Years
3. Float Glass Melting Furnaces [NESD] 10 Years

(c) Plant and Machinery used in mines and quarries—Portable underground machinery and earth moving machinery used in open cast mining [NESD]

8 Years

(d) Plant and Machinery used in Telecommunications [NESD]

1. Towers 18 Years
2. Telecom transceivers, switching centres, transmission and other network equipment 13 Years
3. Telecom—Ducts, Cables and optical fibre 18 Years
4. Satellites -do-

(e) Plant and Machinery used in exploration, production and refining oil and gas [NESD]

1. Refineries 25 Years
2. Oil and gas assets (including wells), processing plant and facilities -do-
3. Petrochemical Plant -do-
4. Storage tanks and related equipment -do-
5. Pipelines 30 Years
6. Drilling Rig -do-
7. Field operations (above ground) Portable boilers, drilling tools, well-head tanks, etc. 8 Years
8. Loggers -do-

(f) Plant and Machinery used in generation, transmission and distribution of power [NESD]

- | | |
|--|----------|
| 1. Thermal/ Gas/ Combined Cycle Power Generation Plant | 40 Years |
| 2. Hydro Power Generation Plant | -do- |
| 3. Nuclear Power Generation Plant | -do- |
| 4. Transmission lines, cables and other network assets | -do- |
| 5. Wind Power Generation Plant | 22 Years |
| 6. Electric Distribution Plant | 35 Years |
| 7. Gas Storage and Distribution Plant | 30 Years |
| 8. Water Distribution Plant including pipelines | -do- |

(g) Plant and Machinery used in manufacture of steel

- | | |
|-----------------------------------|----------|
| 1. Sinter Plant | 20 Years |
| 2. Blast Furnace | -do- |
| 3. Coke ovens | -do- |
| 4. Rolling mill in steel plant | -do- |
| 5. Basic oxygen Furnace Converter | 25 Years |

(h) Plant and Machinery used in manufacture of non-ferrous metals

- | | |
|--|----------|
| 1. Metal pot line [NESD] | 40 Years |
| 2. Bauxite crushing and grinding section [NESD] | -do- |
| 3. Digester Section [NESD] | -do- |
| 4. Turbine [NESD] | -do- |
| 5. Equipments for Calcination [NESD] | -do- |
| 6. Copper Smelter [NESD] | -do- |
| 7. Roll Grinder | 40 Years |
| 8. Soaking Pit | 30 Years |
| 9. Annealing Furnace | -do- |
| 10. Rolling Mills | -do- |
| 11. Equipments for Scalping, Slitting, etc. [NESD] | -do- |
| 12. Surface Miner, Ripper Dozer, etc., used in mines | 25 Years |
| 13. Copper refining plant [NESD] | -do- |

(i) Plant and Machinery used in medical and surgical operations [NESD]

- | | |
|--|----------|
| 1. Electrical Machinery, X-ray and electrotherapeutic apparatus and accessories thereto, medical, diagnostic equipments, namely, Cat-scan, Ultrasound Machines, ECG Monitors, etc. | 13 Years |
| 2. Other Equipments. | 15 Years |

(j) Plant and Machinery used in manufacture of pharmaceuticals and chemicals [NESD]

- | | |
|--|----------|
| 1. Reactors | 20 Years |
| 2. Distillation Columns | -do- |
| 3. Drying equipments/Centrifuges and Decanters | -do- |
| 4. Vessel/storage tanks | -do- |

(k) Plant and Machinery used in civil construction

- | | |
|---|----------|
| 1. Concreting, Crushing, Piling Equipments and Road Making Equipments | 12 Years |
| 2. Heavy Lift Equipments— | |
| Cranes with capacity of more than 100 tons | 20 Years |
| Cranes with capacity of less than 100 tons | 15 Years |
| 3. Transmission line, Tunneling Equipments [NESD] | 10 Years |
| 4. Earth-moving equipments | 9 Years |
| 5. Others including Material Handling /Pipeline/Welding Equipments [NESD] | 12 Years |

(l) Plant and Machinery used in salt works [NESD] 15 Years**V. Furniture and fittings [NESD]**

- | | |
|--|----------|
| (i) General furniture and fittings | 10 Years |
| (ii) Furniture and fittings used in hotels, restaurants and boarding houses, schools, colleges and other educational institutions, libraries; welfare centres; meeting halls, cinema houses; theatres and circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions. | 8 Years |

VI. Motor Vehicles [NESD]

- | | |
|--|----------|
| 1. Motor cycles, scooters and other mopeds | 10 Years |
| 2. Motor buses, motor lorries, motor cars and motor taxis used in a business of running them on hire | 6 Years |
| 3. Motor buses, motor lorries and motor cars other than those used in a business of running them on hire | 8 Years |
| 4. Motor tractors, harvesting combines and heavy vehicles | -do- |
| 5. Electrically operated vehicles including battery powered or fuel cell powered vehicles | 8 Years |

VII. Ships [NESD]

- | | |
|---|----------|
| 1. Ocean-going ships | |
| (i) Bulk Carriers and liner vessels | 25 Years |
| (ii) Crude tankers, product carriers and easy chemical carriers with or without conventional tank coatings. | 20 Years |
| (iii) Chemicals and Acid Carriers: | |
| (a) With Stainless steel tanks | 25 Years |
| (b) With other tanks | 20 Years |
| (iv) Liquified gas carriers | 30 Years |
| (v) Conventional large passenger vessels which are used for cruise purpose also | -do- |
| (vi) Coastal service ships of all categories | -do- |
| (vii) Offshore supply and support vessels | 20 Years |
| (viii) Catamarans and other high speed passenger for ships or boats | -do- |

(ix) Drill ships	25 Years
(x) Hovercrafts	15 Years
(xi) Fishing vessels with wooden hull	10 Years
(xii) Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes	14 Years
2. Vessels ordinarily operating on inland waters—	
(i) Speed boats	13 Years
(ii) Other vessels	28 Years
VIII. Aircrafts or Helicopters [NESD]	20 Years
IX. Railways sidings, locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns [NESD]	15 Years
X. Ropeway structures [NESD]	15 Years
XI. Office equipment [NESD]	5 Years
XII. Computers and data processing units [NESD]	
(i) Servers and networks	6 Years
(ii) End user devices, such as, desktops, laptops, etc.	3 Years
XIII. Laboratory equipment [NESD]	
(i) General laboratory equipment	10 Years
(ii) Laboratory equipments used in educational institutions	5 Years
XIV. Electrical Installations and Equipment [NESD]	10 years
XV. Hydraulic works, pipelines and sluices [NESD]	15 Years

Notes.—

1. "Factory buildings" does not include offices, godowns, staff quarters.

2. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a *pro rata* basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.

3. The following information shall also be disclosed in the accounts, namely:—

- (i) depreciation methods used; and
- (ii) the useful lives of the assets for computing depreciation, if they are different from the life specified in the Schedule.

4. Useful life specified in Part C of the Schedule is for whole of the asset. Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

5. Depreciable amount is the cost of an asset, or other amount substituted for cost, less its residual value. Ordinarily, the residual value of an asset is often insignificant but it should generally be not more than 5% of the original cost of the asset.

6. The useful lives of assets working on shift basis have been specified in the Schedule based on their single shift working. Except for assets in respect of which no extra shift depreciation is permitted (indicated by NESD in Part C above), if an asset is used for any time during the year for double shift, the depreciation will increase by 50% for that period and in case of the triple shift the depreciation shall be calculated on the basis of 100% for that period.

7. From the date this Schedule comes into effect, the carrying amount of the asset as on that date—

(a) shall be depreciated over the remaining useful life of the asset as per this Schedule;

(b) after retaining the residual value, shall be recognised in the opening balance of retained earnings where the remaining useful life of an asset is nil.

8. "Continuous process plant" means a plant which is required and designed to operate for twenty-four hours a day.

SCHEDULE III

(See section 129)

GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET AND
STATEMENT OF PROFIT AND LOSS OF A COMPANY

GENERAL INSTRUCTIONS

1. Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head or sub-head or any changes, *inter se*, in the financial statements or statements forming part thereof, the same shall be made and the requirements of this Schedule shall stand modified accordingly.

2. The disclosure requirements specified in this Schedule are in addition to and not in substitution of the disclosure requirements specified in the Accounting Standards prescribed under the Companies Act, 2013. Additional disclosures specified in the Accounting Standards shall be made in the notes to accounts or by way of additional statement unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act shall be made in the notes to accounts in addition to the requirements set out in this Schedule.

3. (i) Notes to accounts shall contain information in addition to that presented in the Financial Statements and shall provide where required (a) narrative descriptions or disaggregations of items recognised in those statements; and (b) information about items that do not qualify for recognition in those statements.

(ii) Each item on the face of the Balance Sheet and Statement of Profit and Loss shall be cross-referenced to any related information in the notes to accounts. In preparing the Financial Statements including the notes to accounts, a balance shall be maintained between providing excessive detail that may not assist users of financial statements and not providing important information as a result of too much aggregation.

4. (i) Depending upon the turnover of the company, the figures appearing in the Financial Statements may be rounded off as given below:—

Turnover	Rounding off
(a) less than one hundred crore rupees	To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.
(b) one hundred crore rupees or more	To the nearest lakhs, millions or crores, or decimals thereof.

(ii) Once a unit of measurement is used, it shall be used uniformly in the Financial Statements.

5. Except in the case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including notes shall also be given.

6. For the purpose of this Schedule, the terms used herein shall be as per the applicable Accounting Standards.

Note:—This part of Schedule sets out the minimum requirements for disclosure on the face of the Balance Sheet, and the Statement of Profit and Loss (hereinafter referred to as “Financial Statements” for the purpose of this Schedule) and Notes. Line items, sub-line items and sub-totals shall be presented as an addition or substitution on the face of the Financial Statements when such presentation is relevant to an understanding of the company’s financial position or performance or to cater to industry/sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act or under the Accounting Standards.

PART I—BALANCE SHEET

Name of the Company.....

Balance Sheet as at

(Rupees in.....)

Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
1	2	3	4

I EQUITY AND LIABILITIES

(1) Shareholders’ funds

- (a) Share capital
- (b) Reserves and surplus
- (c) Money received against share warrants

(2) Share application money pending allotment

(3) Non-current liabilities

- (a) Long-term borrowings
- (b) Deferred tax liabilities (Net)
- (c) Other Long term liabilities
- (d) Long-term provisions

(4) Current liabilities

- (a) Short-term borrowings
- (b) Trade payables
- (c) Other current liabilities
- (d) Short-term provisions

TOTAL

II ASSETS

Non-current assets

(1) (a) Fixed assets

- (i) Tangible assets
- (ii) Intangible assets
- (iii) Capital work-in-progress
- (iv) Intangible assets under development

1	2	3	4
(b) Non-current investments			
(c) Deferred tax assets (net)			
(d) Long-term loans and advances			
(e) Other non-current assets			
(2) Current assets			
(a) Current investments			
(b) Inventories			
(c) Trade receivables			
(d) Cash and cash equivalents			
(e) Short-term loans and advances			
(f) Other current assets			
TOTAL			

See accompanying notes to the Financial Statements.

Notes

GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET

1. An asset shall be classified as current when it satisfies any of the following criteria:—

- (a) it is expected to be realised in, or is intended for sale or consumption in, the company's normal operating cycle;
- (b) it is held primarily for the purpose of being traded;
- (c) it is expected to be realised within twelve months after the reporting date; or
- (d) it is cash or cash equivalent unless it is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting date.

All other assets shall be classified as non-current.

2. An operating cycle is the time between the acquisition of assets for processing and their realisation in cash or cash equivalents. Where the normal operating cycle cannot be identified, it is assumed to have a duration of twelve months.

3. A liability shall be classified as current when it satisfies any of the following criteria:—

- (a) it is expected to be settled in the company's normal operating cycle;
- (b) it is held primarily for the purpose of being traded;
- (c) it is due to be settled within twelve months after the reporting date; or
- (d) the company does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.

All other liabilities shall be classified as non-current.

4. A receivable shall be classified as a "trade receivable" if it is in respect of the amount due on account of goods sold or services rendered in the normal course of business.

5. A payable shall be classified as a "trade payable" if it is in respect of the amount due on account of goods purchased or services received in the normal course of business.

6. A company shall disclose the following in the notes to accounts.

A. Share Capital

For each class of share capital (different classes of preference shares to be treated separately):

- (a) the number and amount of shares authorised;
- (b) the number of shares issued, subscribed and fully paid, and subscribed but not fully paid;
- (c) par value per share;
- (d) a reconciliation of the number of shares outstanding at the beginning and at the end of the reporting period;
- (e) the rights, preferences and restrictions attaching to each class of shares including restrictions on the distribution of dividends and the repayment of capital;
- (f) shares in respect of each class in the company held by its holding company or its ultimate holding company including shares held by or by subsidiaries or associates of the holding company or the ultimate holding company in aggregate;
- (g) shares in the company held by each shareholder holding more than 5 per cent. shares specifying the number of shares held;
- (h) shares reserved for issue under options and contracts/commitments for the sale of shares/disinvestment, including the terms and amounts;
- (i) for the period of five years immediately preceding the date as at which the Balance Sheet is prepared:
 - (A) Aggregate number and class of shares allotted as fully paid-up pursuant to contract(s) without payment being received in cash.
 - (B) Aggregate number and class of shares allotted as fully paid-up by way of bonus shares.
 - (C) Aggregate number and class of shares bought back.
- (j) terms of any securities convertible into equity/preference shares issued along with the earliest date of conversion in descending order starting from the farthest such date;
- (k) calls unpaid (showing aggregate value of calls unpaid by directors and officers);
- (l) forfeited shares (amount originally paid-up).

B. Reserves and Surplus

(i) Reserves and Surplus shall be classified as:

- (a) Capital Reserves;
- (b) Capital Redemption Reserve;
- (c) Securities Premium Reserve;
- (d) Debenture Redemption Reserve;
- (e) Revaluation Reserve;
- (f) Share Options Outstanding Account;
- (g) Other Reserves—(specify the nature and purpose of each reserve and the amount in respect thereof);

(h) Surplus i.e., balance in Statement of Profit and Loss disclosing allocations and appropriations such as dividend, bonus shares and transfer to/from reserves, etc.;

(Additions and deductions since last balance sheet to be shown under each of the specified heads);

(ii) A reserve specifically represented by earmarked investments shall be termed as a "fund".

(iii) Debit balance of statement of profit and loss shall be shown as a negative figure under the head "Surplus". Similarly, the balance of "Reserves and Surplus", after adjusting negative balance of surplus, if any, shall be shown under the head "Reserves and Surplus" even if the resulting figure is in the negative.

C. Long-Term Borrowings

(i) Long-term borrowings shall be classified as:

(a) Bonds/debentures;

(b) Term loans:

(A) from banks.

(B) from other parties.

(c) Deferred payment liabilities;

(d) Deposits;

(e) Loans and advances from related parties;

(f) Long term maturities of finance lease obligations;

(g) Other loans and advances (specify nature).

(ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.

(iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.

(iv) Bonds/debentures (along with the rate of interest and particulars of redemption or conversion, as the case may be) shall be stated in descending order of maturity or conversion, starting from farthest redemption or conversion date, as the case may be. Where bonds/debentures are redeemable by instalments, the date of maturity for this purpose must be reckoned as the date on which the first instalment becomes due.

(v) Particulars of any redeemed bonds/debentures which the company has power to reissue shall be disclosed.

(vi) Terms of repayment of term loans and other loans shall be stated.

(vii) Period and amount of continuing default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

D. Other Long-term Liabilities

Other Long-term Liabilities shall be classified as:

(a) Trade payables;

(b) Others.

E. Long-term provisions

The amounts shall be classified as:

(a) Provision for employee benefits;

(b) Others (specify nature).

F. Short-term borrowings

(i) Short-term borrowings shall be classified as:

(a) Loans repayable on demand;

(A) from banks.

(B) from other parties.

(b) Loans and advances from related parties;

(c) Deposits;

(d) Other loans and advances (specify nature).

(ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.

(iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.

(iv) Period and amount of default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

G. Other current liabilities

The amounts shall be classified as:

(a) Current maturities of long-term debt;

(b) Current maturities of finance lease obligations;

(c) Interest accrued but not due on borrowings;

(d) Interest accrued and due on borrowings;

(e) Income received in advance;

(f) Unpaid dividends;

(g) Application money received for allotment of securities and due for refund and interest accrued thereon. Share application money includes advances towards allotment of share capital. The terms and conditions including the number of shares proposed to be issued, the amount of premium, if any, and the period before which shares shall be allotted shall be disclosed. It shall also be disclosed whether the company has sufficient authorised capital to cover the share capital amount resulting from allotment of shares out of such share application money. Further, the period for which the share application money has been pending beyond the period for allotment as mentioned in the document inviting application for shares along with the reason for such share application money being pending shall be disclosed. Share application money not exceeding the issued capital and to the extent not refundable shall be shown under the head Equity and share application money to the extent refundable, i.e., the amount in excess of subscription or in case the requirements of minimum subscription are not met, shall be separately shown under "Other current liabilities";

(h) Unpaid matured deposits and interest accrued thereon;

(i) Unpaid matured debentures and interest accrued thereon;

(j) Other payables (specify nature).

H. Short-term provisions

The amounts shall be classified as:

(a) Provision for employee benefits.

(b) Others (specify nature).

I. Tangible assets

(i) Classification shall be given as:

- (a) Land;
- (b) Buildings;
- (c) Plant and Equipment;
- (d) Furniture and Fixtures;
- (e) Vehicles;
- (f) Office equipment;
- (g) Others (specify nature).

(ii) Assets under lease shall be separately specified under each class of asset.

(iii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related depreciation and impairment losses/reversals shall be disclosed separately.

(iv) Where sums have been written-off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

J. Intangible assets

(i) Classification shall be given as:

- (a) Goodwill;
- (b) Brands /trademarks;
- (c) Computer software;
- (d) Mastheads and publishing titles;
- (e) Mining rights;
- (f) Copyrights, and patents and other intellectual property rights, services and operating rights;
- (g) Recipes, formulae, models, designs and prototypes;
- (h) Licences and franchise;
- (i) Others (specify nature).

(ii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related amortization and impairment losses/reversals shall be disclosed separately.

(iii) Where sums have been written-off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

K. Non-current investments

(i) Non-current investments shall be classified as trade investments and other investments and further classified as:

- (a) Investment property;
- (b) Investments in Equity Instruments;
- (c) Investments in preference shares;
- (d) Investments in Government or trust securities;
- (e) Investments in debentures or bonds;
- (f) Investments in Mutual Funds;
- (g) Investments in partnership firms;
- (h) Other non-current investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate indicating separately whether such bodies are (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

(ii) Investments carried at other than at cost should be separately stated specifying the basis for valuation thereof;

(iii) The following shall also be disclosed:

- (a) Aggregate amount of quoted investments and market value thereof;
- (b) Aggregate amount of unquoted investments;
- (c) Aggregate provision for diminution in value of investments.

L. Long-term loans and advances

(i) Long-term loans and advances shall be classified as:

- (a) Capital Advances;
- (b) Security Deposits;
- (c) Loans and advances to related parties (giving details thereof);
- (d) Other loans and advances (specify nature).

(ii) The above shall also be separately sub-classified as:

- (a) Secured, considered good;
- (b) Unsecured, considered good;
- (c) Doubtful.

(iii) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.

(iv) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other persons or amounts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

M. Other non-current assets

Other non-current assets shall be classified as:

- (i) Long-term Trade Receivables (including trade receivables on deferred credit terms);

(ii) Others (specify nature);

(iii) Long term Trade Receivables, shall be sub-classified as:

(A) (a) Secured, considered good;

(B) Unsecured, considered good;

(C) Doubtful.

(b) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.

(c) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

N. Current Investments

(i) Current investments shall be classified as:

(a) Investments in Equity Instruments;

(b) Investment in Preference Shares;

(c) Investments in Government or trust securities;

(d) Investments in debentures or bonds;

(e) Investments in Mutual Funds;

(f) Investments in partnership firms;

(g) Other investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate [indicating separately whether such bodies are: (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities] in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

(ii) The following shall also be disclosed:

(a) The basis of valuation of individual investments;

(b) Aggregate amount of quoted investments and market value thereof;

(c) Aggregate amount of unquoted investments;

(d) Aggregate provision made for diminution in value of investments.

O. Inventories

(i) Inventories shall be classified as:

(a) Raw materials;

(b) Work-in-progress;

(c) Finished goods;

(d) Stock-in-trade (in respect of goods acquired for trading);

(e) Stores and spares;

(f) Loose tools;

(g) Others (specify nature)..

(ii) Goods-in-transit shall be disclosed under the relevant sub-head of inventories.

(iii) Mode of valuation shall be stated.

P. Trade Receivables

(i) Aggregate amount of Trade Receivables outstanding for a period exceeding six months from the date they are due for payment should be separately stated.

(ii) Trade receivables shall be sub-classified as:

(a) Secured, considered good;

(b) Unsecured, considered good;

(c) Doubtful.

(iii) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.

(iv) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

Q. Cash and cash equivalents

(i) Cash and cash equivalents shall be classified as:

(a) Balances with banks;

(b) Cheques, drafts on hand;

(c) Cash on hand;

(d) Others (specify nature).

(ii) Earmarked balances with banks (for example, for unpaid dividend) shall be separately stated.

(iii) Balances with banks to the extent held as margin money or security against the borrowings, guarantees, other commitments shall be disclosed separately.

(iv) Repatriation restrictions, if any, in respect of cash and bank balances shall be separately stated.

(v) Bank deposits with more than twelve months maturity shall be disclosed separately.

R. Short-term loans and advances

(i) Short-term loans and advances shall be classified as:

(a) Loans and advances to related parties (giving details thereof);

(b) Others (specify nature).

(ii) The above shall also be sub-classified as:

(a) Secured, considered good;

(b) Unsecured, considered good;

(c) Doubtful.

(iii) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.

(iv) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other person or amounts due by firms or private companies respectively in which any director is a partner or a director or a member shall be separately stated.

S. Other current assets (specify nature)

This is an all-inclusive heading, which incorporates current assets that do not fit into any other asset categories.

T. Contingent liabilities and commitments (to the extent not provided for)

(i) Contingent liabilities shall be classified as:

- (a) Claims against the company not acknowledged as debt;
- (b) Guarantees;
- (c) Other money for which the company is contingently liable.

(ii) Commitments shall be classified as:

- (a) Estimated amount of contracts remaining to be executed on capital account and not provided for;
- (b) Uncalled liability on shares and other investments partly paid;
- (c) Other commitments (specify nature).

U. The amount of dividends proposed to be distributed to equity and preference shareholders for the period and the related amount per share shall be disclosed separately. Arrears of fixed cumulative dividends on preference shares shall also be disclosed separately.

V. Where in respect of an issue of securities made for a specific purpose, the whole or part of the amount has not been used for the specific purpose at the balance sheet date, there shall be indicated by way of note how such unutilised amounts have been used or invested.

W. If, in the opinion of the Board, any of the assets other than fixed assets and non-current investments do not have a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion, shall be stated.

PART II—STATEMENT OF PROFIT AND LOSS

Name of the Company.....

Profit and loss statement for the year ended

(Rupees in.....)

Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
1	2	3	4
I. Revenue from operations		xxx	xxx
II. Other income		xxx	xxx
III. Total Revenue (I + II)		xxx	xxx

	1	2	3	4
IV. Expenses:				
Cost of materials consumed				
Purchases of Stock-in-Trade				
Changes in inventories of finished goods			xxx	xxx
work-in-progress and Stock-in-Trade			xxx	xxx
Employee benefits expense			xxx	xxx
Finance costs				
Depreciation and amortisation expense				
Other expenses				
Total expenses			xxx	xxx
V. Profit before exceptional and extraordinary items and tax (III - IV)			xxx	xxx
VI. Exceptional items			xxx	xxx
VII. Profit before extraordinary items and tax (V - VI)			xxx	xxx
VIII. Extraordinary items			xxx	xxx
IX. Profit before tax (VII- VIII)			xxx	xxx
X. Tax expense:				
(1) Current tax			xxx	xxx
(2) Deferred tax			xxx	xxx
XI. Profit (Loss) for the period from continuing operations (VII-VIII)			xxx	xxx
XII. Profit/(loss) from discontinuing operations			xxx	xxx
XIII. Tax expense of discontinuing operations			xxx	xxx
XIV. Profit/(loss) from Discontinuing operations (after tax) (XII-XIII)			xxx	xxx
XV. Profit (Loss) for the period (XI + XIV)			xxx	xxx
XVI. Earnings per equity share:				
(1) Basic			xxx	xxx
(2) Diluted			xxx	xxx

See accompanying notes to the financial statements.

**GENERAL INSTRUCTIONS FOR PREPARATION OF STATEMENT OF
PROFIT AND LOSS**

1. The provisions of this Part shall apply to the income and expenditure account referred to in sub-clause (ii) of clause (40) of section 2 in like manner as they apply to a statement of profit and loss.

2. (A) In respect of a company other than a finance company revenue from operations shall disclose separately in the notes revenue from—

- (a) Sale of products;
- (b) Sale of services;
- (c) Other operating revenues;
- Less:
- (d) Excise duty.

(B) In respect of a finance company, revenue from operations shall include revenue from—

- (a) Interest; and
- (b) Other financial services.

Revenue under each of the above heads shall be disclosed separately by way of notes to accounts to the extent applicable.

3. Finance Costs

Finance costs shall be classified as:

- (a) Interest expense;
- (b) Other borrowing costs;
- (c) Applicable net gain/loss on foreign currency transactions and translation.

4. Other income

Other income shall be classified as:

- (a) Interest Income (in case of a company other than a finance company);
- (b) Dividend Income;
- (c) Net gain/loss on sale of investments;
- (d) Other non-operating income (net of expenses directly attributable to such income).

5. Additional Information

A Company shall disclose by way of notes additional information regarding aggregate expenditure and income on the following items:—

(i) (a) Employee Benefits Expense [showing separately (i) salaries and wages, (ii) contribution to provident and other funds, (iii) expense on Employee Stock Option Scheme (ESOP) and Employee Stock Purchase Plan (ESPP), (iv) staff welfare expenses].

(b) Depreciation and amortisation expense;

(c) Any item of income or expenditure which exceeds one per cent. of the revenue from operations or Rs. 1,00,000, whichever is higher;

(d) Interest Income;

- (e) Interest expense;
- (f) Dividend income;
- (g) Net gain/loss on sale of investments;
- (h) Adjustments to the carrying amount of investments;
- (i) Net gain or loss on foreign currency transaction and translation (other than considered as finance cost);
- (j) Payments to the auditor as (a) auditor; (b) for taxation matters; (c) for company law matters; (d) for management services; (e) for other services; and (f) for reimbursement of expenses;
- (k) In case of Companies covered under section 135, amount of expenditure incurred on corporate social responsibility activities;
- (l) Details of items of exceptional and extraordinary nature;
- (m) Prior period items;
- (ii) (a) In the case of manufacturing companies,—
 - (1) Raw materials under broad heads.
 - (2) goods purchased under broad heads.
- (b) In the case of trading companies, purchases in respect of goods traded in by the company under broad heads.
- (c) In the case of companies rendering or supplying services, gross income derived from services rendered or supplied under broad heads.
- (d) In the case of a company, which falls under more than one of the categories mentioned in (a), (b) and (c) above, it shall be sufficient compliance with the requirements herein if purchases, sales and consumption of raw material and the gross income from services rendered is shown under broad heads.
- (e) In the case of other companies, gross income derived under broad heads.
- (iii) In the case of all concerns having works in progress, works-in-progress under broad heads.
 - (iv) (a) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserve, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as to which the balance sheet is made up.
 - (b) The aggregate, if material, of any amounts withdrawn from such reserves.
 - (v) (a) The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.
 - (b) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.
- (vi) Expenditure incurred on each of the following items, separately for each item:—
 - (a) Consumption of stores and spare parts;
 - (b) Power and fuel;
 - (c) Rent;
 - (d) Repairs to buildings;
 - (e) Repairs to machinery;
 - (f) Insurance;

- (g) Rates and taxes, excluding, taxes on income;
- (h) Miscellaneous expenses,
- (vii) (a) Dividends from subsidiary companies.
- (b) Provisions for losses of subsidiary companies.
- (viii) The profit and loss account shall also contain by way of a note the following information, namely:—

(a) Value of imports calculated on C.I.F basis by the company during the financial year in respect of—

- I. Raw materials;
- II. Components and spare parts;
- III. Capital goods;

(b) Expenditure in foreign currency during the financial year on account of royalty, know-how, professional and consultation fees, interest, and other matters;

(c) Total value if all imported raw materials, spare parts and components consumed during the financial year and the total value of all indigenous raw materials, spare parts and components similarly consumed and the percentage of each to the total consumption;

(d) The amount remitted during the year in foreign currencies on account of dividends with a specific mention of the total number of non-resident shareholders, the total number of shares held by them on which the dividends were due and the year to which the dividends related;

(e) Earnings in foreign exchange classified under the following heads, namely:—

- I. Export of goods calculated on F.O.B. basis;
- II. Royalty, know-how, professional and consultation fees;
- III. Interest and dividend;
- IV. Other income, indicating the nature thereof.

Note:— Broad heads shall be decided taking into account the concept of materiality and presentation of true and fair view of financial statements.

GENERAL INSTRUCTIONS FOR THE PREPARATION OF CONSOLIDATED FINANCIAL STATEMENTS

1. Where a company is required to prepare Consolidated Financial Statements, *i.e.*, consolidated balance sheet and consolidated statement of profit and loss, the company shall *mutatis mutandis* follow the requirements of this Schedule as applicable to a company in the preparation of balance sheet and statement of profit and loss. In addition, the consolidated financial statements shall disclose the information as per the requirements specified in the applicable Accounting Standards including the following:

(i) Profit or loss attributable to "minority interest" and to owners of the parent in the statement of profit and loss shall be presented as allocation for the period.

(ii) "Minority interests" in the balance sheet within equity shall be presented separately from the equity of the owners of the parent.

2. In Consolidated Financial Statements, the following shall be disclosed by way of additional information:

Name of the entity in the	Net Assets, i.e., total assets minus total liabilities		Share in profit or loss	
	As % of consolidated net assets	Amount	As % of consolidated profit or loss	Amount
1	2	3	4	5
Parent				
Subsidiaries				
Indian				
1.				
2.				
3.				
Foreign				
1.				
2.				
3.				
Minority Interests in all subsidiaries				
Associates (Investment as per the equity method)				
Indian				
1.				
2.				
3.				
Foreign				
1.				
2.				
3.				
Joint Ventures (as per proportionate consolidation/ investment as per the equity method)				

1	2	3	4	5
Indian				
1.				
2.				
3.				
Foreign				
1.				
2.				
3.				
TOTAL				

3. All subsidiaries, associates and joint ventures (whether Indian or foreign) will be covered under consolidated financial statements.

4. An entity shall disclose the list of subsidiaries or associates or joint ventures which have not been consolidated in the consolidated financial statements along with the reasons of not consolidating.

SCHEDULE IV

[See section 149(8)]

CODE FOR INDEPENDENT DIRECTORS

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

I. Guidelines of professional conduct:

An independent director shall:

- (1) uphold ethical standards of integrity and probity;
- (2) act objectively and constructively while exercising his duties;
- (3) exercise his responsibilities in a *bona fide* manner in the interest of the company;
- (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- (5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
- (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- (7) refrain from any action that would lead to loss of his independence;
- (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- (9) assist the company in implementing the best corporate governance practices.

II. Role and functions:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties :

The independent directors shall—

- (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- (5) strive to attend the general meetings of the company;
- (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
- (7) keep themselves well informed about the company and the external environment in which it operates;
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
- (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
- (11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

IV. Manner of appointment:

- (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
- (2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.
- (3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.

- (4) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out :
 - (a) the term of appointment;
 - (b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
 - (c) the fiduciary duties that come with such an appointment along with accompanying liabilities;
 - (d) provision for Directors and Officers (D and O) insurance, if any;
 - (e) the Code of Business Ethics that the company expects its directors and employees to follow;
 - (f) the list of actions that a director should not do while functioning as such in the company; and
 - (g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.
- (5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.
- (6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.

V. Re-appointment:

The re-appointment of independent director shall be on the basis of report of performance evaluation.

VI. Resignation or removal:

- (1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.
- (2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.
- (3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

VII. Separate meetings:

- (1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;
- (2) All the independent directors of the company shall strive to be present at such meeting;
- (3) The meeting shall:
 - (a) review the performance of non-independent directors and the Board as a whole;

-
- (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
 - (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

- (1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.
- (2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

SCHEDULE V

(See sections 196 and 197)

PART I

CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT

APPOINTMENTS

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—

- (i) the Indian Stamp Act, 1899 (2 of 1899);
- (ii) the Central Excise Act, 1944 (1 of 1944);
- (iii) the Industries (Development and Regulation) Act, 1951 (65 of 1951);
- (iv) the Prevention of Food Adulteration Act, 1954 (37 of 1954);
- (v) the Essential Commodities Act, 1955 (10 of 1955);
- (vi) the Companies Act, 2013;
- (vii) the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (viii) the Wealth-tax Act, 1957 (27 of 1957);
- (ix) the Income-tax Act, 1961 (43 of 1961);
- (x) the Customs Act, 1962 (52 of 1962);
- (xi) the Competition Act, 2002 (12 of 2003);
- (xii) the Foreign Exchange Management Act, 1999 (42 of 1999);
- (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (xiv) the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (xv) the Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);
- (xvi) the Prevention of Money-Laundering Act, 2002 (15 of 2003);

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

(c) he has completed the age of twenty-one years and has not attained the age of seventy years:

Provided that where he has attained the age of seventy years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

- (d) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;
- (e) he is resident of India.

Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—

- (i) for taking up employment in India; or
- (ii) for carrying on a business or vacation in India.

Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

PART II

REMUNERATION

Section I.— Remuneration payable by companies having profits:

Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

Section II.— Remuneration payable by companies having no profit or inadequate profit without Central Government approval:

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below:—

(A):

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	30 lakhs
(ii) 5 crores and above but less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60 lakhs
(iv) 250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores:

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

Explanation.—It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(B) In the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, — 2.5% of the current relevant profit:

Provided that if the resolution passed by the shareholders is a special resolution, this limit shall be doubled:

Provided further that the limits specified under this section shall apply, if—

- (i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee;
- (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;
- (iii) a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;
- (iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:—

I. General Information:

- (1) Nature of industry
- (2) Date or expected date of commencement of commercial production
- (3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
- (4) Financial performance based on given indicators
- (5) Foreign investments or collaborations, if any.

II. Information about the appointee:

- (1) Background details
- (2) Past remuneration
- (3) Recognition or awards
- (4) Job profile and his suitability
- (5) Remuneration proposed
- (6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)
- (7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

III. Other information:

- (1) Reasons of loss or inadequate profits
- (2) Steps taken or proposed to be taken for improvement
- (3) Expected increase in productivity and profits in measurable terms.

IV. Disclosures:

The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:—

- (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;

- (ii) details of fixed component and performance linked incentives along with the performance criteria;
- (iii) service contracts, notice period, severance fees;
- (iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Section III.—Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances:

In the following circumstances a company may, without the Central Government approval, pay remuneration to a managerial person in excess of the amounts provided in Section II above:—

- (a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.
- (b) where the company—
 - (i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or
 - (ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival,it may pay remuneration up to two times the amount permissible under Section II.
- (c) where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal:

Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:—

- (i) except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;
- (ii) the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of section 196.
- (iii) the auditor or Company Secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.
- (d) a company in a Special Economic Zone as notified by Department of Commerce from time to time which has not raised any money by public issue of shares or debentures in India, and has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year, may pay remuneration up to Rs. 2,40,00,000 per annum.

Section IV.—Perquisites not included in managerial remuneration:

1. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III:—

- (a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961 (43 of 1961);
- (b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
- (c) encashment of leave at the end of the tenure.

2. In addition to the perquisites specified in paragraph 1 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III—

- (a) *Children's education allowance:* In case of children studying in or outside India, an allowance limited to a maximum of Rs. 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.
- (b) *Holiday passage for children studying outside India or family staying abroad:* Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.
- (c) *Leave travel concession:* Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

Explanation I.— For the purposes of Section II of this Part, “effective capital” means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Explanation II.— (a) Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment;

(b) In any other case the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

Explanation III.— For the purposes of this Schedule, “family” means the spouse, dependent children and dependent parents of the managerial person.

Explanation IV.— The Nomination and Remuneration Committee while approving the remuneration under Section II or Section III, shall—

- (a) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.;

(b) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

Explanation V.— For the purposes of this Schedule, “negative effective capital” means the effective capital which is calculated in accordance with the provisions contained in *Explanation I* of this Part is less than zero.

Explanation VI.— For the purposes of this Schedule:—

(A) “current relevant profit” means the profit as calculated under section 198 but without deducting the excess of expenditure over income referred to in sub-section 4 (i) thereof in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding or subsidiary companies.

(B) “Remuneration” means remuneration as defined in clause (78) of section 2 and includes reimbursement of any direct taxes to the managerial person.

Section V.—Remuneration payable to a managerial person in two companies:

Subject to the provisions of sections I to IV, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

PART III

Provisions applicable to Parts I and II of this Schedule

1. The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.

2. The auditor or the Secretary of the company or where the company is not required to appoint a Secretary, a Secretary in whole-time practice shall certify that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196.

PART IV

The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.

SCHEDULE VI

(See sections 55 and 186)

The term "infrastructural projects" or "infrastructural facilities" includes the following projects or activities:—

(1) Transportation (including inter modal transportation), includes the following:—

(a) roads, national highways, state highways, major district roads, other district roads and village roads, including toll roads, bridges, highways, road transport providers and other road-related services;

(b) rail system, rail transport providers, metro rail roads and other railway related services;

(c) ports (including minor ports and harbours), inland waterways, coastal shipping including shipping lines and other port related services;

(d) aviation, including airports, heliports, airlines and other airport related services;

(e) logistics services.

(2) Agriculture, including the following, namely:—

(a) infrastructure related to storage facilities;

(b) construction relating to projects involving agro-processing and supply of inputs to agriculture;

(c) construction for preservation and storage of processed agro-products, perishable goods such as fruits, vegetables and flowers including testing facilities for quality.

(3) Water management, including the following, namely:—

(a) water supply or distribution;

(b) irrigation;

(c) water treatment.

(4) Telecommunication, including the following, namely:—

(a) basic or cellular, including radio paging;

(b) domestic satellite service (i.e., satellite owned and operated by an Indian company for providing telecommunication service);

(c) network of trunking, broadband network and internet services.

(5) Industrial, commercial and social development and maintenance, including the following, namely:—

(a) real estate development, including an industrial park or special economic zone;

(b) tourism, including hotels, convention centres and entertainment centres;

(c) public markets and buildings, trade fair, convention, exhibition, cultural centres, sports and recreation infrastructure, public gardens and parks;

(d) construction of educational institutions and hospitals;

(e) other urban development, including solid waste management systems, sanitation and sewerage systems.

(6) Power, including the following:—

(a) generation of power through thermal, hydro, nuclear, fossil fuel, wind and other renewable sources;

(b) transmission, distribution or trading of power by laying a network of new transmission or distribution lines.

(7) Petroleum and natural gas, including the following:—

(a) exploration and production;

(b) import terminals;

(c) liquefaction and re-gasification;

(d) storage terminals;

(e) transmission networks and distribution networks including city gas infrastructure.

(8) Housing, including the following:—

(a) urban and rural housing including public / mass housing, slum rehabilitation, etc;

(b) other allied activities such as drainage, lighting, laying of roads, sanitation and facilities.

(9) Other miscellaneous facilities/services, including the following:—

(a) mining and related activities;

(b) technology related infrastructure;

(c) manufacturing of components and materials or any other utilities or facilities required by the infrastructure sector like energy saving devices and metering devices;

(d) environment related infrastructure;

(e) disaster management services;

(f) preservation of monuments and icons;

(g) emergency services (including medical, police, fire and rescue).

(10) such other facility service as may be prescribed.

SCHEDULE VII

(See sections 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies

Activities relating to:—

- (i) eradicating extreme hunger and poverty;
- (ii) promotion of education;
- (iii) promoting gender equality and empowering women;
- (iv) reducing child mortality and improving maternal health;
- (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- (vi) ensuring environmental sustainability;
- (vii) employment enhancing vocational skills;
- (viii) social business projects;
- (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- (x) such other matters as may be prescribed.

Sd/-

P. K. Malhotra,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

C. J. GOTHI,

Secretary to Government.